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THE
DUTY and POWERS
OF
Justices of Peace,
IN
This Part
OF
GREAT-BRITAIN
CALLED
SCOTLAND.

WITH
An APPENDIX concerning Weights
and Measures.

By WILLIAM FORBES Advocat.

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T O T H E
Right Honourable
Sir David Dalrymple
O F
H A L E S,

Knight Baronet, Advocat, and Her
Majesty's Sollicitor.

S I R,

A Long Epistle before this
very (very) little Book,
would seem as Ridiculous
as a little House with a lofty Porch.
I must therefore put off to another
Occasion, the Expressing my Re-
sentment of the many Demonstra-
tions of your Favour to me, and
my just Esteem for so Learned and
Eloquent a Lawyer, so good a Pa-
triot, and so able and necessary a
State-Physician, as you have ap-
proven your self. Give

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Give me leave, Sir, only to say,
that a less Figure in the World could
not have been expected from your
Sound, Brisk and Excellent Parts,
Refined by more than ordinary Ad-
vantages of Education. Allow me
also to compliment you upon your
being now in a fair way to get rid
of the Doctors about ye: and at
the same time let me wish you
confirm'd Health and Strength, to
prove a Happy Instrument of the
Prosperity of this your Native
Countrey. I hope that, since by
your Advice I write this Manual
of Instructions to our *Justices of
Peace*, you will not grudge it
your Countenance. And I am ever,

SIR,

Your most Humble, and
most obliged Servant,

WILLIAM FORBES.

T H E P R E F A C E.

JUSTICES of the Peace, are so many *Godly, Wise, and Virtuous Gentlemen, of good Quality, Moven and Report,* as the Sovereign pleases to Name, for keeping of the Peace of the Shire where they Live (a). Their Office (which their very designation implyes) is something like that of the *Irenarchæ* among the Romans. But as the Formers Interest in the Country is a surer Pledge of Fidelity in the Discharge of their Trust, than could have been Expected from the Latter, who were only a sort of Military Magistrates subordinated to the *Præsides Provinciarum* for keeping the Provinces Quiet: so their Station is more Honourable, in so far as like the Roman Censors, they can punish immorality, &c.

(a) *So they are Described in the Act 7 par. 20. J. 6.*

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They are Called Justices of the Peace, for that the doing of Justice to preserve the publick Peace, is expected from them, and also *Commissioners of the Peace*, because their Authority flows from the Sovereigns Commission.

They have four ordinary Terms of Meeting yearly, called the General Quarter-Sessions. And sometimes also they Conven upon Extraordinary Occasions, *pro re nata*, when there is a Necessity for it.

We had no Formal Office of Justice of Peace, till King *James* the Sixth's Time: The Charge of Maintaining the publick Peace of old being annexed only to particular publick Offices; whereof it continues yet a Cumulative Consequence. But, at length, for Extirpating the Inveterate Barbarous Custom of Deadly Feuds, and Controversies of Neighbourhood, in *Scotland*, which frequently were attended with Fatal Consequences; That Prince Introduced and Settled Justices of Peace and Constables among us, after the Model of *England*. Where their first Being is dated from 1327, the first Year of *Edward* 3d: And their Authority being much
inlarg'd,

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inlarg'd, during the Civil Wars of the Houses of *York* and *Lancaster*, from what it was at first, 'tis now at that just Pitch of Consistency, as if duly executed, no part of the World can boast of the like Subordinated Government.

In *England*, some of the Justices, whom the Sovereign doth most Respect and Confide in, are called Justices of the *Quorum*, from these Words in the Commission, *Quorum, A, B, C, D. Unum esse volumus*, without whose Concurrence, the rest cannot proceed in some Cases of Importance. And one of these is made *Custos Rotulorum*, whom the Commission of the Peace enjoins to cause bring before himself, and his Fellows, at certain Days and Places, which any two or more of them should appoint, the Writs, Precepts, Processes, and Inditements therein mentioned. Every *Custos Rotulorum* names one to be Clerk to the General Sessions of the Peace, during his Office: Whom yet the Justices of Peace, at their General Quarter Sessions, may Suspend or Discharge for Malversation; And may name another Clerk, if the *Custos Rotulorum*

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lorum fail to supply the Office before the next General Quarter Sessions. But tho the Clerk of the General Sessions be named by the *Custos Rotulorum*, as his Deput: every Justice of the Peace, or so many as can Judge, may chuse their own Clerk in Extra-Sessional Business.

I don't find, within the Compass of my Observation, that ever we had any Justices of the *Quorum* in our Commissions of the Peace. But that we had such a *Custos Rotulorum* as they have in *England*, is clear from the first Commission for keeping of the Peace within the Shire of *Edinburgh*, under the Great Seal, dated *August 28. 1610*, wherein Sir *James Foulis of Collingtoun*, one of the Justices of Peace therein-named, was appointed *Custos Rotulorum, cum Potestate nominandi Amanuensem, seu Scribam, qui scripta omnia ad hujusce Commissionis Executionem spectantia in notam redigat, & publicis Schedis inserat.* Which Authentick Commission was kindly communicated to me by his Successor, the present Sir *James Foulis of Collingtoun*. Again, the *Custos Rotulorum*, by two
AAs

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Acts of Parliament (*a*), was made Conveener of the Justices of the Peace upon extraordinary Occasions : And by the Instructions 1655, had power to appoint the place for the Quarter Sessions.

The Justiceship of Peace, after its first Establishment here, went in Desuetude for want of due Execution, tho Ratified with all its powers in the Parliament 1633. To tell the Reasons whereof, as beyond my present purpose, I refer to those who have penetrated into the Politick of our Civil Constitution. But *Oliver Cromwells* Instructions to the Justices of Peace and Constables in the Year 1655, did Inspire the Office with more Life and Efficacy, than ever it had before or since.

Which Instructions, for the Reasonableness thereof, were almost Copied after, *Mutatis Mutandis*, in the Act of Parliament 1661. And the Office hath been, in a manner, kept up since then, tho, alas ! to very little purpose. And to what other Cause can we impute the not Execution of many good Laws,

(*a*) *Ja. 6. Parl. 22. Cap. 8. Ch. 2. Parl. 1. Sess. 1. Cap. 38.*

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made here for the Incouragement of Trade and Manufactures, than to the Languishing and Deadness of the Justicehip of Peace?

But now, by a late Commission & Proclamation of Her Majesties Privy Council in this part of *Great-Britain*, the Power and Jurisdiction of Justices of Peace is set upon a new Foot, and extended to what belongs to the Office, in relation to the Customs and Excise, by Laws made in *England* before the Union.

The Authority of our Justices of Peace is, in some Cases, Ministerial and Executive, when they are commanded to do their Duty by some Higher Power. As when the Privy Council gives them Direction about the making of new Highways to Parish Churches; Or about the Building of a Prison-house in the Head-burgh of a Shire, where there was none before.

In other Cases they have a Judicative Power to Decide in Matters within the Verge of their Instructions. And this Judicative Power is, in some things, like that of the *Roman Judices Pedanei*, tied to the Observance of a *Formula* of Procedure

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Procedute. So, they can only Judge Breakers of the Peace, under the Degree of Noblemen, Prelats, Counsellors, or Senators of the Colledge of Justice; And charge those of a higher Degree to find Caution for the Peace. They are Ordained to proceed against Cutters and Destroyers of Planting, Green-wood, Slayers of Red and Black-Fish, &c. by virtue of Commissions to be granted to them for that Effect. They may Fine Hostlers for Reser of Rebels, Vagabonds, &c. (if not punished within fifteen days by the Baron or Master of the Ground) in fourty shilling Scots for the first, four pound for the second, and ten Merks, with the Loss of Liberty to Brew, for the third Fault. They may Tax Parishes for the Maintenance of the Poor in a Weekly Proportion, not under one shilling, or above five, &c.

Some things again, the Justices are left to Decide, according to their Discretion: For that all the Circumstances could not be fore-seen. So they are allowed to punish, according to their Discretion, such as wrong the Highways,

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ways, or refuse to concur for mending of them. And may give Orders about what is fit to be done in time of Plague, and may make Acts against notorious Drunkards, and punish Contraveeners. They can also Regulate Servants Fees and Tradesmens Prices, &c. But this Discretion of the Justices of Peace is not Unaccountable and Arbitrary, according to their private Affections, (which would open a Door to Corruption and Oppression) but limited within the Rules of Reason and Law. And therefore, tho the Justices be Impowered to punish, according to their Discretion, such as refuse to concur for mending the High-ways : That is expressly so qualified in the Statutes, that if the Rigour or Severity of their Proceeding afford Ground of Complaint, they themselves are Censurable by the Privy-Council. But then again, their Sentence in Cases of the Excise, is final, and there lies no Appeal from it.

Our Advantage by these Country Magistrats, is obvious to any thinking person, who considers the good Effects of their Wise and Benign Administration
in

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in *England* ; And the vast Inconveniencies we and others have hitherto laboured under, for want of such a well ordered Magistracy, to put the Laws in Execution against the Disorderly. Justices of Peace seem rather calculated for preventing Delinquencies, than for punishing Delinquents. Their Authority will fright People into their Duty, and keep up the Credit of Law and good Manners. Nor is it very probable, that they will abuse this Authority: Seing Disorder and Licensiousness in the Country would dash their own Injoyments. Again, the Justices of Peace are a Check upon the Judge ordinary, in Matters to which they are competent. For his Negligence to do Justice upon Offenders within fifteen days, is suppliable by them. And if his Sentence against a Delinquent bear no Satisfaction to the Party Lefed, they may Modify a reasonable Satisfaction. Or if the Satisfaction Ordained by the Judge ordinary, be not answerable to the Wrong done ; They may get it rectified, upon a Representation to the Council. And they may get Judges Malversing, by Collusion with Criminals, to be Censured and Punished.

Tho

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Tho the Powers of our Justices of Peace are not generally considered, to be so ample, as that of the *English* Justices; Because of the many particular Powers expressly given to the latter by Statute. Yet the general Rules given to the former by our Acts of Parliament, do often include as much, and sometimes more Authority. For Example, their general Power to make and execute Acts against Excessive Drinking is (full out) as great as what the *English* Justices can do for Curbing that Vice. And the general Clause allowing the former to prescribe what is to be done in time of Plague, and to punish the Disobedient, is as Extensive, if not more, than all the many *Proviso's* of Authority to the latter; For shutting up and relieving Infected Persons, appointing Searchers, Watch-men, Examiners, Keepers and Buryers, which is not extended over Persons within the Precincts of either of the two Universities, or any Cathedral Church, or the Colleges of *Eaton* or *Winchester*.

But then, if our Justices of Peace have less Powers, than those in *England*; They have not such a Multiplicity of Statutes

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Statutes to Consult, in order to find what they ought to do, as the former are oblig'd to croud their Memories with. Nevertheless I cannot, for the present, help thinking, (with all Submission to the superior Wisdom of the Parliament) that it were our Interest to have Justices of Peace among us, with the same Powers they have in *England*: And that perhaps it were the Interest of *England*, to have these scattered Powers reduc'd, and summ'd up in one Statute, by way of Instructions, after the fashion of our Acts 1617 and 1661, to render the Execution of the Commission of Peace more easy; Many Persons being loth to procure Peace to others, with their own Disquiet.

In order to describe the Office of a *Constable*, I shall not be much sollicitous about the various *Criticisms*, that has been spent upon the Derivation and Pedegree of the Word and Office. But shall content my self to notice, That Constables are Men clothed with Authority, Resembling that of the old *Latrunculatores* among the *Romans*, and of the *Prevot de Marechaux* in *France*. They differ from the *Tithing-Men*, or *Head-Boroughs* in *England*, in this, That the latter are less Honourable, and cannot meddle where a Constable is present, except as his Assistants; But are the only Officers for the Peace in Towns, where there are no Constables. Constables are Officers subservient to the Justices of Peace, either for bringing Criminals before them, or carrying them by their Command to the common Prison: Which, if they refuse to do at the Desire of the Justices, themselves may be Committed and Fined. Excise-men must have a Constables Concurrence, when they enter into any Brew-house by Night to Gauge Fats or Vessels, or break open Doors in the Day-time, upon Suspicion of Secret Conveyance of Worts. In *England*, the Constables Watch a Nights, and Walk their Rounds in their several Parishes, having the chiet Command of the Watch. Whence a Constable came to be called a King of the Night.

This little Treatise, (if it may be called a Treatise) is divided into three Chapters. The first Exhibites an Abstract of the Duty and Powers of Justices of Peace, out of our own Acts of Parliament and two Council Proclamations (a), with Observations thereon. The Matter of the Customs is the Subject of the second Chapter. And in the third, I have Treated distinctly and fully of what I thought fit to be known about the Excise in the Order following, 1. I consider the Managers, and inferior Officers of the Excise, particularly the Gaugers; And shew what they can and ought to do in their respective Capacities. 2. The Persons lyable to Excise, and the Legal Checks upon them, to prevent their Eluding the same, fall under Consideration. 3. Excisable Liquors, the several Rates or Quantities of the Excise Duty, and the Allowances or Eases given

(a) viz. One in the 1655, and one in this present Year,

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o those lyable for the same, are spoke to. 4. I make it my Business
o Discourse of the Entry of Excisable Liquors, and the payment of
Excise. And, 5. Of Action and Diligence competent about Ex-
cise Matters.

To all which, an *Appendix* concerning Weights and Measures
is subjoined, but not so full as was design'd. For an Emergent diffi-
culty oblig'd me to interrupt and cut off the same, without Adjust-
ing and Proportioning the *Scots* and *English* Measures, which was
the thing mainly intended by the *Appendix*.

In short, the Reader will find in the following Sheets abundance of
Matter couch'd in little Room. And this may suffice for a Taste of
what is to be expected therein.

I know no more I have to Advertise my Reader of, save that He'll
find, as is usual, the *Scots* Statutes cited with respect to the Parlia-
ment they were made in, and the *English* Statutes cited with respect
to the Year of the Sovereigns Reign.

But some will be apt to say, That, when I undertook to Dictate to
the Justices of Peace in so Multifarious a Subject, and par-
ticular in the Matter of Excise, I had not sufficiently Gag'd
my own Capacity: And perhaps 'tis true. All the Excuse
I have at hand is, That the Task was given me by a Worthy and
Knowing Person, who thought I might Rub through it; It is per-
formed as well as I could; And something of this Nature was much
wanted here. For none of the several Books about the Justiceship
of Peace, writ successively in *England* by Mr. Marrow, Sir Anthony
Fitzherbert, Mr. Crompton, Mr. Lambard, Mr. Dalton, and W. N.
of the *Middle-Temple* Barrister, are of great present Use to us. In re-
gard, That in any before the two last, there is nothing concerning
the Customs or Excise, which are the only Matters, wherein our
Justices of Peace have, as yet, got *English* Justice-Powers: And
these two Books (tho Bulky enough) are neither full nor exact up-
on the Customs or Excise. I have made this *Innuendo*, not from
any Inclination to Censure or Derogate from so Learned and Indus-
trious Authors; But that the World may not, upon their Establish'd
Reputation, Implicitly carp at this *Manual*, when they find other
things therein, and somethings otherways expressed.

THE

(1)
THE
DUTY and POWERS
OF
Justices of Peace,
IN
SCOTLAND, &c.

CHAP. I.

An Abstract of the Duty and Powers of Justices of Peace, out of our own Acts of Parliament, and the late Commission and Proclamation.

THE Seventh Act of King *JAMES* the sixth's Twenty Parliament, *anno* 1609; Ordains the Sovereign, with Advice of His Privy Council, to appoint yearly, in every Shire, according to the extent thereof, a certain Number of Wise and Virtuous Gentlemen of good Quality and Report, Residing therein, to be Justices and Commissioners for keeping the Peace, and suppressing Disorders; with power to command all Persons suspected to have a Design to make Trouble or Disorder, by gathering together idle and disorderly Persons, or by publick wearing of forbidden Weapons, or the like Swaggering Behaviour, to
A find

find Caution under competent Penalties to observe the Peace, and compear before the Justices or Privy Council, to answer for their Behaviour: And if need were to Require the Assistance and Concurrence of the Shire, for quashing of Tumults, apprehending or incarcerating Delinquents; Which Delinquents, and such as refused their concurrence to the Justices, were to be arbitrarily punished as the Privy Council thought fit. Again, these Justices of Peace were ordained to give true Advertisement and Information to the Lords of Council, Commissioners of Justiciary and others whom it effeirs, of the Names of the best Witnesses and Assizers to be summoned in all Crimes and Disorders falling out in the respective Shires, that such as are unable to Travel or ignorant may not be unnecessarily drawn from their own Houses and Affairs.

2. Thereafter King *JAMES* the sixth gave the following Instructions to the Justices of Peace and their Constables, which were Ratified in his 22 Parliament *anno 1617, viz.* 1. That both should Qualify themselves by taking an Oath *de fidei* at their Admission. The Justices of Peace must Swear, That according to their Knowledge, Wit and Power, they shall do equal Right to Rich and Poor, conform to the Laws and Customs of the Land; and shall not be of Counsel with any person in any matter depending before them; and that they shall keep the Sessions every Quarter, or oftner if Required, not having any just ground of Impediment; and shall faithfully discharge their Duty, leaving nothing undone that may tend to the Preservation of the Peace. The Constables must Swear that they shall faithfully discharge their Office, without respect of Persons, and above all things regard the keeping

ing of the Peace, and give true and due Information of any breach thereof to the Justices at each of their Quarter Sessions. 2. Any one Justice upon complaint of a person Swearing that he hath just cause to dread Harm from another, may bind that other under a Sum to the Peace, and commit him till he find Surety (a): Or without complaint the Justice may upon credible Information of appearance of trouble among persons, bind all to the peace; unless they purge themselves of mutual grudge by a Declaration upon their Conscience. And these Bonds are to be delivered at the next Quarter Session to the Clerk of the Peace to be kept and Recorded by him. 3. A Justice of Peace may call and compel any Person, whose Rent exceeds not Ten Chalders of Victual or 1000 Merks, to compear before him. And if any Landed Gentleman of a higher Valuation, refuse to give Obedience, the Justice may inform some of the Privy Council that he may be fined. 4. If the Sheriff or Baillie hath sentenced or fined an Offender, the Justice hath no power to sentence or fine over again for the same fault or crime: But if no satisfaction to the party lesed be ordered by the Judge Ordinary, the Justice may modifie a reasonable satisfaction; in a pursuit for the same before him. Or if the satisfaction be not condign, or answerable to the Offence and wrong sustained, the Justice may re-

(a) Mr. Dalton in his Country Justice (Chap. 117) Observes, That a Husband may get his Wife, and a Wife her Husband, obliged to find surety for the Peace; and that one Justice may bind another to the Peace; Yea, even that a Justice may grant surety of the Peace against his own Wife. Surety for the Peace differs from surety for good Behaviour or *de se bene gerendo*; in that, the latter includes the former and something more.

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present it to the Council, that they may take order therewith. 5. If any person thro' collusion with the Judge be quitted by an Assize, the party once cleared is not to be further questioned before the Justices; but upon their Information the Judge is to be called, censured and punished by the Council. 6. The Justices may judge all committers of Riots and breakers of the Peace, under the Degree of Noblemen, Prelates, Counsellors or Senators of the Colledge of Justice: And may punish and fine according to the Quality of the Crime and the Offenders Estate, upon his being holden as confest, if personally apprehended at the first Citation, or upon a second Citation at his dwelling-house, tho' not personally apprehended (*a*); and may charge those of a higher Degree to find caution for the Peace, and for their compearance before the Council (*b*). And a charge to find caution being contraveened by some intermediat Deed, before the finding of caution, the Contraveener shall be answerable for the Penalty, as if caution had been found. 7. They should execute the Acts of Parliament a-

(*a*) By our Custom, no Person can be holden as Confest, except personally Apprehended, lest Men should Inadvertently be drawn into Snares by Citations at the Dwelling-House. But here two Citations at the Dwelling-House are made equivalent to one that's personal. Because the Subject of Contraversy in Justice of Peace Courts, is but small. (*b*) Perhaps now, since the Union, our Justices cannot oblige Peers to find Caution for keeping the Peace, but must be content to take their Word of Honour for it; Because the Law of England requires no more from Noblemen, as if they were of a more than ordinary Peaceable Disposition, and would think it below them to break the Peace. Yet Mr. Dalton (Country Justice, Chap. 117.) is of Opinion, That English Peers may be got bound to the Peace by a *Sub Pana* out of the Chancery, and that if they refuse to compear upon the Serving of the said Writ against them, they may be Arrested by a *Capias*, or Attachment, for the Contempt,

gainst

Justices of Peace.

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gainst wilfull or sturdy Beggars (a), Vagabonds, idle Persons, Egyptians, (b) and their Resettlers, or Setters of Houses to them. —8. They are to order the mending of highways (c), to and from Mercat-Towns or Sea-ports, and to maintain the ways to Parish-churches: And where they find necessity for a new way to inform the Council, and receive their Direction; They may punish with Discretion such as wrong the High-ways or refuse to concur for mending them (d). The breadth of of High-ways to Mercat-towns is declared to be Twenty Foot at least, and such as are larger are not to be altered or straitned. 9. The Laws against Cutters and destroyers of Planting, Greenwood, Orchards, Gardens, Hainings, Breakers of Dove-houses and Cunningares, Steallers of Bees or Hives, Users of setting Dogs, Slayers of

(a) Tho our Law be very Careful of, and Charitable to the Impotent and Miserable Poor, by providing for their Intertainment: We have Copied after the Civil Law (*Tit. Cod. de Mendicantibus Validis, Nov. 80.*) and Custom of other Nations, in making severe Sanctions against Sturdy Beggars. (b) Egyptians are a parcel of Vagabond Thieves, who go up and down with Blackened Faces speaking Gibberish, and telling Fortunes. They were Sentenc'd to Banishment in France, Spain, and Germany, under the respective Names of *Bohemiennts*, *Gittani*, and *Zigeuni*; And were Comanded to Run this Countrey without Returning, under Pain of Death, *Act 13. Parl. 20. Ja. 6.* (c) By High-ways here are understood the Queens High-ways, which only are the Subject of the Justices Care. For the Servitudes of *Via* a Cart-way, *Alus* a Foot and Horse-way, and *Iter* a Foot-way, are Regulated and Determined by the Civil Law, and the privat Pactions of Parties. Among the *Romans*, The Censors were the Inspectors of the Publick Ways: And these being Diverted by other Business, the Care was Committed to the *Quatuor Viri Viarum Curandarum*, in place of whom, the *Cura-tores Viarum Singularam extra Urbem* Succeeded. And the Civil Law Allowed several Interdicts against the Stoppers of High-ways. (d) Yet they are not Allowed to Use their Discretion Arbitrarily, but Equitably; For if they be Unreasonably Severe, themselves are Censurable by the Privy Council.

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Burning of Heathes into Mofes
 Red and Black Fishes and Smolts in forbidden time, Fowling in other Mens Lands, making of Muir and Mofsburn, setting of Cruives and Nets in Waters and Damms, and the using of cruives and Zairs in forbidden time, are to be executed by the Justices by virtue of Commissions to be granted to them *Salvo Jure Cujuslibet*, for trying and fining upon Probation by Witnesses or Oath of Party, such of the said Offenders, as they by their Instructions may proceed against, or are not conveyened before any other Judge (a). 10. They should at least once a Year inform the Council, Treasurer or Advocat, of Forestallers or Regraters of Mercats (b); and the breakers of the Acts against Malt-makers (c). 11. If Barons and Heretors punish not Hostlers dwelling *receiving or entertaining* upon their Ground, for reset of Rebels at the

(a) The Justices are not in Use to Proceed against Cutters of Green Wood, Slayers of Red and Black Fish, &c. Because the Act Appoints Commissions to be granted them for that Effect, and no such Commission was ever granted. (b) Tho Forestallers and Regraters, called *Dardanarii* in the Civil Law, be commonly Confounded as one and the same: They properly differ in this, That Regraters are those who Buy up all Goods, in order to Sell them again at a dearer rate; And Forestalling is the Buying of Goods before they come to an Open Mercat, or the Buying in a Mercat before it be Proclaimed. Not as if all Buying of Things going to a Mercat were Forestalling: For that may be done sometimes Ignorantly by one who knew not of the Mercat, and sometimes Necessarily, when a Person Buys for his own Use. But those are only Punishable as Forestallers, against whom, something of Design against the Publick Good can be made out. This Crime, whereof the Cognition is now Thirled to the Justices, was Antiently Judged only in the Chamberlane Air. (c) Maltmen are Discharged to have a Deacon, *Act 29. Parl. 1. Ja. 6. Act 15. Parl. 2. Ch. 2.* Lest, at their Meetings, they might Conspire to Force Gentlemen to Sell their Victual at any Rate, by Arbitrarily Setting a Price upon it, and upon the Ale and Beer. But the Lords of Privy Council are Impowered to Proportion the Weight of Bread with the Boll of Wheat, and the Price of the Ale with that of the Bear, *Act 15. Sess. 1. Parl. 2. Ch. 2.*

Horn,

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Horn, Vagabonds, Masterless or other suspected Persons, within fifteen Days; The Justice may Fine them in Fourty shillings for the first, four pound for the second, and ten Merks with the loss of Liberty of Brewing for the third Fault; without prejudice to any greater pains and penalties that the said Resettlers may be lyable in by Law. 12. They shall set down Orders concerning what is fit to be done in the time of Plague, and punish Contraveeners severely (a). 13. They shall at the Quarter Sessions in February and August determine the Quantity of Servants Fees, and may compel them by Imprisonment or other punishment to serve for these Fees, and oblige Masters to pay them. It is also enjoyned them to regulate the prices of penny-bridals, Shearers Fees, and Tradesmens Work. 14. They are to notice that Prison houses be kept up, & not suffered to decay, and inform the Council what Shires want Prisons, & proceed according to their Direction in the building of a Prison within the Head-burgh(b). 15. They may Tax Parishes in a weekly proportion not under one shilling, nor exceeding five, for the Intertainment of poor Prisoners, to be uplifted by the respective Ministers or Readers, from Deacons appointed to collect the same, and to be delivered by the Constable of the paroch at the

(a) The Ordering what should be done in Time of Pestilence, was once the Business of the Clergy, as being a Work of Christian Charity, *Act 57. Parl. 13. Ja. 2.* (b) By the *Act 273. Parl 15. Ja. 6.* Sufficient Prisons were Ordained to be Built and Upholden in all Burghs by the Provost, Baillies and Council thereof, on their Common Good, or otherways on the Charges of the Burgh, because of the great Immunities and Privileges they enjoy: And Prisons are not understood sufficient, without Cat-Bands and Outward-Chains, which the Prisoner cannot Force from within.

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 Quarter Sessions to the Justices Order. 16 Ma-
 gistrats and Keepers of Prisons are obliged to re-
 ceive and answer for Prisoners brought to them by
 the Constables, or Warrants subscribed by the
 Justices: they satisfying for their Intertainment
 (a). 17. The Justices should cause sufficient
 single and double Ale to be Brewed in every Shire,
 and appoint Visitors with consent of the Master
 of the Ground for that effect (b). And should
 make Acts against common and notorious Drun-
 kards and punish the Contraveeners (c). 18.

(a) The *Act 6. Sess. 8. and 9. Parl. K. W.* Against Wrongous Im-
 prisonment, doth not hinder Inferior Magistrats, or Justices of
 Peace, to take Security for the Good Behaviour, and Keeping of the
 Peace, as formerly; Or to Imprison, in Order to Tryal, for Indig-
 nities done to themselves, or Disobedience to Church Censures, or
 Riots or Tumults, or Drunkenness, Sabbath-Breaking, Swearing,
 uncleanness, Pickeries and Thieving, or to Imprison Vagabonds as
 formerly: The Persons Imprisoned having Relief by Offering Bail,
 and Demanding a Tryal as in the Act. (b) The *Act 43. Sess. 6.*
Parl. K. W. Discharges the making Use of Salt in Brewing Ale or
 Beer any manner of way, under Pain of Confiscation of the Brew-
 ing Looms, and Liquor therein, to the Informer, tho Employed as
 a Servant, and Accessory thereto: Besides the Loss of the Trans-
 gressors Freedom if a Burgess, and Incapacity to Brew thereafter,
 whether Burgess or not. And the Contravention of this Act is pro-
 bable by Oath of Parry, or *prout de Jure*. (c) The Justices of
 Peace, by their Instructions, and the *Act 19. Sess. 1. Parl. 1. Ch. 2.*
 would seem to be the only Judges for Punishing Drunkenness. But
 yet the *Act 20. Parl. 22. Ja. 6.* appears to give the Kirk-Session a
 Cumulative Jurisdiction in the Matter. And the *Act 22. Sess. 3.*
Parl. 2. Ch. 2. Authorizes the Minister and Kirk-Session in Landwart
 Parishes, with such of the Heretors as should meet upon eight days
 Warning from the Pulpit, to Name a Collector for Uplifting the
 Fines Imposed for Prophaneness by the Justice of Peace, or other
 Judge ordinary: And where no such Person of Authority Resides
 in the Parish, to Name a fit Mandwelling there, for Executing the
 Laws against Prophaneness; Whom the Judge ordinary of the
 Bounds is to Invest for that Effect with the Powers of Deputation.
 And the Minister, Kirk Session, and Heretors of each Parish, con-
 vened in manner foresaid, are Allowed to Apply the said Fines as
 the Act prescribes. And this Act was Ratified by the 25. *Act 2. Sess.*
Parl. W. and M.

Justices of Peace.

9

Three Justices are a *Quorum* to judge in the Interval betwixt Sessions. 19. Justices of Peace are not chargeable as such, upon Letters of Captiōn for apprehending of Rebels. 20. A Commission being granted to some persons for reducing all Weights and Measures to the *Linlithgow* Standart, the Justices of Peace are to see that the said common Measure be universally used, and that there be a conformity in weight & measure, betwixt Burgh and Countrey; for which end the Landwart Ju- County Justices stices may require a Note from the Magistrats and Dean of Gild of every Town, of their Weights and Measures, and inform the privy Council of what is wrong. And no other Measures than these given up in the said Note are to be allowed within the Burgh till licensed, and the said Justices be acquainted therewith (a). The Justices are also to order the Constables to apprehend

(a) The Acts for Reducing Weights and Measures to the *Linlithgow* Firlot, were never Extended to Miln-Measures; And did not prejudice any Persons Right to a different Measure by Infeftment, Tack or Contract: But only obliged to proportion the same to *Linlithgow* Standart, *Mackenzie Observ. on the Act 114, Parl. 11. Ja. 6.* But Meal was Ordained to be sold by Weight, at the Rate of eight Stone Trois, in place of the *Linlithgow* Boll, under the pain of Elcheat of the Meal to the Informer, and eight days Imprisonment of the Seller, to be Executed by the Judge competent, under the pain of double the Value to the Informer, *W. and M. Parl. 1. Sess. 6. Cap. 6.* And now, since the Union, by the seventeenth Article thereof, the *English* Weights and Measures are to be used here: And Standarts thereof, conform to those kept in the Exchequer at *Westminster*, are to be sent down to be kept by those Burghs, to whom the keeping of the Standarts of our present Weights and Measures doth belong, *viz. Edinburgh*, where the Standart of our Eln is kept, *Lanerk*, where our Stone Weight is kept, *Linlithgow*, where the Firlot is, and *Stirling*, where the *Scots* Pint or Jugg is kept. And the Justices are to see, that these new Standarts be the Rule of Measure and Weight every where. But this seems to be without prejudiae to the Acknowledgment paid to the Town of *Wigton*, and some other particular Burghs, by Immemorial Possession, for Measuring Juggs, and giving a free Stallage to those within their Territory.

Despisers

10 *The Duty and Powers of*

Despisers of Church censure. 21. They must appoint a sufficient Collector for uplifting the Fines and penalties they shall impose upon Offenders, and cause them find Caution. And the Lords of Session are to direct general Letters at the said Collectors instance for these Fines, on a fifteen Days charge (*a*), and not to suspend but upon Consignation of the Fine, and Caution for payment of charges at the Lords Modification (*b*). 22. Justices under the Degree of a Lord of Session are allowed Fourty shillings *per diem* for their attendance at the Sessions (not exceeding three days at one time) to be payed by their Collector. And these who have this allowance are lyable in the penalty of Fourty pound for absence not excused from every ordinary Quarter Sessions, or from other Meetings when lawfully required to assist thereat by the *custos rotulorum* (*c*). 23. The Justice should after every Quarter Session send in to the Clerk of Council a List of the persons committed, or put under surety by them with an Abbreviat of the cause thereof, (*d*) to the end the Council may direct betwixt and the next Sessions what shall be done with them.

(*a*) But now General Letters of Horning are Discharged, except for the Queens Revenue, & Ministers Stipends on Decrets for Locality, & General Letters on Decrets for Poinding the Ground, *Act 13. Sess. 2. Parl. W. and M.* (*b*) Sir G: Mackenzie (*Observ. on the 2. Act. Parl. 22. Ja. 6.*) says, That Consignation is not in *Viridi Observantia*. But yet, by the 31. *Act. Sess. 6. K. W.* Advocations of Penal Actions for Prophanenels, or Suspension of Sentences thereon, are not Allowed without Consignation or Discharges. (*c*) According to the Rule of Law, *Quem sequitur commodum, eum sequi debet incommodum*. By the Law of England, Judges and Sergeants at Law are not bound to Attend the Sessions, but when they can do it conveniently, *Stat. Canterbr. Cap. 10. 12. R. 2.* (*d*) This, in the Civil Law, is called *Transmittere cum Elogio*.

CON-

CONSTABLES.

3. As to the Constables, the Act 1617, contains the following Instructions, 1. Two or more Constables are to be appointed from six Months to six Months in every paroch or Great Town, not being a free Burgh, by the Justices of peace in their Quarter Sessions, and in Burghs-Royal by the Magistrats. And the constable refusing to swear *de fiddi* may be imprisoned and fined by the Justices. 2. All Constables, or at least one from each paroch, in Name of the rest, should attend the Quarter Sessions, inform concerning breaches of the peace, and the Evidences thereof, and receive the Justices Directions. 3. Constables may apprehend suspected persons, Night Walkers who cannot give a good account of themselves, Vagabonds, sturdy Beggars, Egyptians, idle poor persons, and Yeomen wearing Hagbuts, Pistols and Daggers; and carry them to the next Justice of peace (a); They may also seize persons for Slaughter, Murder, Theft or any other capital Crime; and require the Assistance of Neighbours for the safe conveying of them to the Justice of peace, which Neighbours refusing to concur may be punished by the Justices at their Sessions. 4. They ought to Rid Frays, and seek the Neighbours to assist for separating the parties; and such as hurt them may be punished by the Justices. 5. A Constable may follow one that hath made a Fray, into any House, and require open Doors to

(a) We distinguish not here with the Common Law between Offensive and Defensive Arms.

*Country
Threatner*

be made, and upon being denied Liberty to enter, may take Witnesses. Yea he may even follow and apprehend the Delinquent in a fresh pursuit without his bounds, and crave the Countreys Concurrence (a). 6. A Constable may upon a Complaint apprehend a Yeoman threatner, and carry him with the complainer before a Justice of Peace, and may Imprison him if he refuse to go. 7. Constables and Clerks of the Peace are to be paid for their Labours out of the Fines, and if these fall short, the Lords of Exchequer shall see to the payment.

These powers granted to Justices of Peace and Constables, are declared to be without prejudice to any persons Right or Privilege of Jurisdiction. For saving whereof the Justices are discharged to cite any Delinquent before their Courts, till after expiring of 15 days from the Commission of the Crime: Which Interval is allowed to the Judge competent to exerce his power and Jurisdiction (b).

4. The forsaide Act 1617, was Ratified and Confirmed by the 25 Act of King Char. 1. Par. 1633. with the addition of a Parliamentary power to the Lords of Privy Council, for inlarging the Authority of Justices of Peace, and imposing Penalties on such of them as keep not their Meetings (b).

(a) This is called *the Hue and Cry*. (b) This is a mighty Limitation upon the Justices's Power. But they were put under no such Restraint by *Commonwel's* Instructions. (c) Sir G. Mackenzie observes, That this being only in effect a Commission, it may be said to Expire with the King and Parliament who gave it; And that being granted to the Privy Council indefinitely, without adding for the time being, it could last no longer than that Commission of Council. However the Council have still been in Use hitherto, to give Instructions to the Justices of Peace by virtue of this Act.

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5. The said Instructions given to the Justices of peace and Constables, were renewed in the Act 38. Parl. 1. Sess. 1. Ch. 2. anno 1661. with these additional Articles, viz. That the Justices of peace be Nominated by the Sovereign, and at their first Meeting take the Oaths of Allegiance and *de fidei administratione*. And that they meet in their respective Shires four times in the year. viz. the first *Tuesdays* of *March* (a), *May* and *August*, and the last *Tuesday* of *October*. In which Quarter Sessions, they may administrat Justice in matters belonging to their Jurisdiction, punish Faults and Crimes committed in the preceeding Quarter, determine Servants Fees, and Tradesmens prices, elect or continue Constables or other Officers, and dispose of the Fines for their payment: and apply what's over to other Uses; and may continue or adjourn their Sessions. 2. They are to execute the Acts against Curfers and Swearers, or Mockers of piety (b), by exacting the Fines in

(a.) *March* seems to be put here, by Mistake, for *February*. Because, not only in the Instructions to the Justices of Peace in the Years 1610, and 1655, (out of which this Act is mostly drawn) the first *Tuesday* of *February* is made one of the Quarter Sessions; But also *infra* in the same Act, Servants Fees and Workmens Prices are Ordained to be Determined at the Quarter Sessions in *August* and *February*. And besides, the Interval between the first *Tuesday* of *February* and the first *Tuesday* of *May*, makes a just Quarter of a Year, whereas two Moneths only interveen betwixt these days in *March* and *May*. (b) All Judges, Magistrats, and Justices of Peace, are Ordained to Execute the Laws against Persons delated to them by the Kirk Sessions, or other Church Judicatories, as guilty of Prophaneness, Act 22. Sess. 3. Parl. 2. Ch. 2. And they are enjoined to put these Laws in Execution at all times, without Necessity of a Dispensation, against all Delinquents, under the pain, (in case of Failure upon Requisition by the Minister, Kirk Session, or their Procurator) of 100 Pound *toties quoties* to the Poor of the Parish. Unless they can instruct, That, within ten days of the Instrument taken against them, they used all Diligence to put the Laws in Execution. For which 100 Pound they may be pursued summarily before the Lords of Session at the Instance of the foresaids Persons, or the Church Agent, W. Parl. 1. Sess. 5. Cap. 13. the

14 The Duty and Powers of

the Act 19 Par. 1. Sess. 1. Ch. 2. and punishing the insolvent in their persons. And to punish delinquent Wives according to their Husbands Quality, and to make their Husbands pay for them (a). They are to execute the Laws against Fornication (b), by exacting for the first Fault from each Nobleman or Woman 400 lib: each Baron or Baroness 200 lib. each other Gentleman or Woman and Burgesses 100 lib. and from these of Inferior Quality 10 lib. and doubling the penalties according to Relapses, and Degrees of the Offence, and Quality of the Offenders; and making both the Man and Woman pay according to their Quality (c). 4. They are to execute the Laws against Drunkenness or haunting of Taverns or Alehouses after Ten a Clock at Night, and against the Keepers of such Houses who sell them Drink; and the Acts against prophaners of the Lords Day. 5. The one half of the penalties is to be applied to pious Uses in the paroch where the Offence was committed, and the other half to be divided betwixt the Informer and Prosecuter, and

(a) But in the case of Conventicling, the Wives Fine was but the half of her Husbands, Ch. 2. Parl. 2. Sess. 2. Cap. 5. And as the said fifth Act was justly swept away by the Rescissory Statute in K. W. and Q. M. Reign: So it seems hard in the general, to punish a Husband for his Wives Transgression; For, *sans cuique Socio Dolus obesse debet. Delicta suos tenent Authores.* And *Pena ex Delicto pendenda Societati non est imputanda*, l. 52. § ult. ff. pro Socio. And the Nation was so sensible of the Hardship of Fining Husbands for their Wives Contravention of Penal Statutes, That it is posited in the Claim of Right as an Article contrary to it. Again, were it not strange to make a Man pay for his Wives Unlawful Swearing, who cannot be prejudged by her Oath taken in a Lawful Way for a Civil Debt. (b) The Justices of Peace must Execute the Laws against Fornication and Prophaneness, without prejudice to the Exercise of Church Discipline, Act 22. Sess. 3. Parl. 2. Ch. 2. (c) Because they concur in the Transgression; & *mutua Culpa, mutua Pena.*

the

the Constable, and other Uses at the sight of the Justices. 6. The Justices shall cause apprehend hainous Criminals, and commit or bail them as the Cause allowes, take the Accusers Information upon Oath, and bind him to prosecute, take the Deposition of the Witnesses, and bind them to give Evidence, and take the Examination of the accused, and signifie all to the next *Quarter Sessions* or Criminal Court *respective*, that Justice may proceed against the Criminals (a). 7. If any Nobleman, Baron or Baillie claim Right to judge a capital Offender apprehended by a Constable, the Justice of Peace shall take surety from him to Minister Justice duly, and shall Report the matter to the Bench at the next sessions, that they may enquire if Justice was accordingly done, and if not, may acquaint the Privy Council. 8. The Justices must twice in the Year, the first of *December* and the first of *June*, take up a List of the impotent poor in every Paroch, and appoint two or more Overseers, who ought to provide a House for them, and take up the Collections of the paroch and other sums destined for the Poores Use, and dispose of it proportionably for their Maintenance. These Overseers are to inquire into the Behaviour of the Inrolled poor; Of whom if any go Abroad to beg, or refuse to work as they are able, or be guilty of other Miscarriages; the Overseers are to acquaint the Justices to punish them for the first Fault as they think fit; and for continuing in these Miscarriages to proceed against them as Vagabonds. The Justices are to

(a) This sort of Precognition by the Justices, was never in Observance with us.

take account of these Overseers Administration upon Oath, every six Months or oftner as they see Cause. And if any who is named an Overseer refuse to accept, or having accepted be found negligent, or decline to account for his Intromissions when required; the Offender in either of these cases shall be Fined in 20 pound for the use of the poor, and further censured at the Quarter Sessions, as the Justices shall think fit. 9. The Justices are authorized to call those who exercised the Office under the Usurper, to an accompt for all Fines imposed by them, and to exact from them what had not warrantably been disposed of. 10. Constables are to arrest all wearers of Guns, not being in the Kings service, or duly Licensed, and to carry them to the next Justice.

6. The Instructions given by *Cromwells* Council in *Scotland* to the Justices of Peace and Constables anno 1655, run much in the strain of the Acts of Parliament 1617 and 1661, but vary in that by the Protectors Instructions, 1. The Oath *de fidei* contains an expresse Clause that the Justices should take nothing for their Office but what was or should be allowed by Law. 2. The *Custos Rotulorum* was allowed to Name the place where the Justices of Peace should hold their Quarter Sessions, if they or their *Quorum* failied to do it. 3. The powers of the Justices were not subject to any *superfedere* of Exercise for any days after Commission of the Crime. 4. They might compell any Man to come before them, and proceed against all Committers of Riots and breakers of the Peace without Exception. 5. Any two or more of them were a sufficient *Quorum* to decide in matters occurring betwixt the Quarter Sessions. 6. Where the Collections of a Paroch or other sums destined for

for maintaining the Poor thereof, were found deficient, and less than would answer that end; the Justices to supply the same might tax or stent the Parochioners proportionably, with a competent weekly or monthly Contribution. 7. The reasonable satisfaction to be allowed to the Constables out of the Fines for their pains while they attended the Sessions, or were employed in carrying Delinquents to prison, was not to exceed 12 pence *per diem*.

7. The Acts 16 17, 1633, and 1661 were Ratified and confirmed by the 16 Act of King James 7's first Parliament, with power to the Justices of Peace to proceed against Church irregularities and non-conformity, and to chuse their own Clerk, and Authorizing the Privy Council, upon the death of any of the Justices of Peace, to name others in their place; but prejudice always to the Jurisdiction of Sheriffs, Stewarts, and Baillies of Bailliarie, Regality and Baronie. But the Justices of peace were deprived of the power of naming their own Clerk (as being the privilege of the Secretaries of State) by the 20 Act of the 2d Sess of that same Parliament. And the foresaid Act 16 was *funditus* Rescinded by the Act 28. Sess. 2. par. W. & M. (a)

(a) And yet the Council hath hitherto been in Use to Name Justices of Peace, in place of such as died. But I dare not say, That they will now continue in the Exercise of that Privilege; Since, by the Nineteenth Article of the Union, the Sovereign is Allowed to Continue a Privy Council in Scotland, for the Publick Peace and Order, only during the British Parliaments Pleasure. And the late Commission and Proclamation Naming Justices of Peace among us, is Declared Effectual during Her Majesties Pleasure allennarily, who may Alter, or Add to the Number therein, by a Letter or Warrant under Her Royal Hand.

7. The care of the Highways committed to the Justices of Peace by former Acts of Parliament, having mostly proven ineffectual, for want of special Orders to them for that effect: The Act 16. *Par. 2. Sess. 1. Ch. 2.* doth appoint the sheriff of each Shire, with one of his Deputs, being an Heretor therein, and the Justices of Peace to convene at the Head-burgh thereof, upon the first *Tuesday* of *May* yearly, with power to them, or the Majority of them to divide among themselves the oversight of the High-ways within the Shire; and power to every one to cause Tenents within the bounds of their part, bring Horses, Carts, Slades, and Instruments necessary for repairing the High-ways betwixt the Bear-lead and Hay-time or Harvelt; and to appoint them Wages for their service and attendance; so be, their Work-days for Man and Horse do not exceed the Number of six yearly for the first three Years, and four days yearly thereafter. And to poind for each Mans absence from the Work, to the value of 20 shillings, and for the Absence of Man and Horse, to the value of 30 shillings; and Apprise the same upon the ground of the Land, and therewith to hire others; and to punish the Absents personally if they have not poindable Goods. Three of the Justices, by Order from the rest, may change inconvenient High-ways, and estimate upon Oath the damage of Parties prejudged thereby; who are to receive the same in Writ from them, in order to get satisfaction from the Shire. Again, the Justices are ordered to meet at the Head-burgh of the Shire for the three subsequent years, the first *Tuesday* of *June* yearly, and thencefurth every *Tuesday* from Fortnight to Fortnight.

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night during the Months of *June* and *July*, at such places as they shall appoint, for taking account of the several Justices and Overseers of the respective proportions of High-ways committed to them; and to fine such as have been negligent, and to pōind therefore upon the ground of the Lands where their Goods shall be found. The Justices are also to oversee the Ferries in their Shire, and where any ly betwixt two Shires, the Justices of both Shires must concur to appoint sufficient Boats, and convenient Landing places, and to see that the Liedges be readily and well served at reasonable Rates; and to punish Transgressors of the Rules set down by them for that effect. And the Heretors in Burgh and Landwart in each Shire, are required to meet at the Head-Burgh the said first *Tuesday* of *June* yearly, and to stent themselves, if needful, not exceeding 10 Shillings on the 100 pound of valued Rent, for the uses foresaid of repairing of the High-ways, and making and repairing Bridges or Ferries; to be uplifted by the said Justices or their Order, by pōinding as said is: for the imploying whereof to these Uses, they shall be accountable to the Heretors yearly at the next *Michaelmas* Head-court. And the Breakers or Abusers of the High-ways by plowing, laying Stones, Dung or Rubbish thereon, pooling or damming Water thereon, or otherways, being convict thereof by Oath or Witness, are finable by the Justices: and the Fines to be applyed for the use of the High-ways. And any damage of that kind to the High-ways is to be reputed done by the Labourers of the next adjacent Land, who shall be fined therefore; refer-

Collectors
Legacies

Land
or Tax.

Scots Ell

ving to them to pursue the real Actors for Relief before the Justices. The Justices are also Authorized to see to the right Application of all Destinations or Mortifications to Bridges, Causeys, Ferries or High-ways. And their Convener ordained to give an account the third Tuesday of July yearly to the Privy Council of their Progress in repairing High-ways, Ferries or Bridges: who are impowered to grant Horning and Pounding, and to order the Levying of moderate Customs^(a) at Bridges, Causeys or Ferries, for the foresaid Effects in case the Stent fall short; and are impowered in case the Justices and Heretors neglect the care of the High-ways, Bridges and Ferries, to take the Charge upon themselves, by appointing Overseers, and to punish the others. The Justices may also pound the Labourers of Land lying upon High-way-sides unfenced by Dyke, Ditch or Hedge, to the value of Four shilling Scots for each Eln that is not fenced after the first of August 1671; and the Fine to be applied for the fencing thereof.

8. The Interval betwixt Seed-time and Harvest being found too short for repairing High-ways, Bridges and Ferries, it was appointed by the 9 Act of the 2d Sess. of that same 2d Parliament of K. Ch. 2d. that the respective Sheriffs and Justices to whom the Execution of the foresaid Act 16 was committed, may call the country, to work

(a) Tho ordinarily Customs can only be Impos'd by the Sovereign Authority of Parliament, l. 10. ff. de Public. & Vestig. l. 3. Cod. de Vestigal. Nov. Institut. non posse junci. Act 57. Parl. 1. Sess. 1. Ch. 2. Yet we have Exceptions of this Nature, even in the Civil Law, l. 10. C. de Vestigal.

Justices of Peace.

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and mend the Ways, Bridges and Ferries at any time, Seed-time and Harvett excepted; and may take Money for dispensing with those who are ly-^{this differ}
able to work thereat, but by reason of their di-^{according}
stance cannot attend, viz. six shillings yearly for each Man, and 12 shillings for each Horse, to be expended on Workmen in their place.

9. The said Act 16 Sess. 1. and Act 9. Sess. 2. Ch: 2. were Ratified by the Act 8. Sess. 2. Par. Ja. 7. wherein the commissioners of Supply are joined to the Justices of Peace in the Charge of High-ways and Bridges, and Five made a *Quorum*; excepting the Shires of *Clackmannan*, *Kinross* and *Cromarty*, where three is declared a sufficient Number to Act. The Sheriff or his Deputs appointed to intimate the first Dyet of their Meeting yearly at each Parish Church upon the preceeding *Sunday*, under the pain of 500 Merks *Scots*. And the Penalty of each days absence from the Meeting 20 Merks; to be applyed for Repairing High-ways and Bridges. The Inhabitants are appointed to work at the Reparation of the High-ways six days yearly, for the space of five years, from the last *Tuesday* of *June* 1686. The Expense of Repairing Bridges and Ferries that are upon the confines of two Shires, must ly upon both proportionably to their respective Valuations. And if Shires or Burghs do not repair and uphold the Bridges within their several Bounds, but suffer them to fall, they are to be fined in as much as will Repair or Rebuild them.

10. A late Commission and Proclamation of Her Majesties Privy Council here, issued out in this present year 1707, hath Named a new set of Ju-
stices

Justices of Peace among us, Declaring all Noblemen^(a), Privy-counsellors, and Lords of Session, to be Justices every where within *Scotland*. And giving the same powers to these Justices of Peace that is competent by the Laws of *Scotland*, particularly the above-mentioned 38 *Act Parl.* 1661. And farther Inpowering them to do in Matters relating to the Customs and Excise, what belongs to the Office by Laws made in *England* before the Union. But in all Matters of the said Excise, the Justices of Peace for the Shire of *Midlothian*, and the Magistrates of *Edinburgh* for the time being (who are appointed Justices of Peace for the Good-town) are to meet and judge as formerly. And for every other Royal Burgh the Eldest Magistrat for the time Residing, and not a Brewer there ^(b). Which Justices are ordained to take the Oaths of Allegiance and *de fideli*, and to subscribe the former with the Assurance. And the said Commission is only to be effectual during Her Majesties Pleasure: who may from time to time alter or add to the

(a) I don't find, that ever all the *English* Peers had, by Commission, such a Privilege as this, of being Transcendent Justices of the Peace thro' all *England*. Tho a Learned Writer (*Smith de Repub. Angl. Lib. 2. Cap. 22.*) Insinuates, That sometimes some of the chief Nobility get Commissions of that Extensive Nature, as a particular Mark of the Royal Favour. And the *Stat. 2. H. 5. Cap. 4.* which obliges Justices of the Peace to Reside within their respective Shires, doth Except Lords, Judges, Sergeants at Law, and the Kings Attorney. (b) Several Royal Burghs in *Scotland* are Honorable Justices of Peace within their own Bounds, as *Edinburgh, Aberdeen, &c.* These Mr. *Lambard* (*Errenarcha, Lib. 1. Cap. 5.*) calls Justices of Peace by Letters Patent, to distinguish them from simple Commissioners of the Peace. And that Author will have Grants of the former Kind not to be Revocable at Pleasure, as the latter are. Yea Mr. *Dalton* (*Country Justice, Chap. 6. §. 7.*) Allows not Justices of Peace to Exerce their Authority in any City, that hath the Right of Justiceship within their County.

Number of Justices therein named, by a Letter or Warraund under Her Royal Hand.

11. In pursuance of good Method, I proceed to treat of Customs and Excise: In order to clear up the foresaid *English* Powers now communicated to our Justices of Peace in consequence of the Union.

C H A P. II.

Concerning the Customs.

1. **C**USTOM, or that Duty which is paid to the publick for Merchandise imported or exported, was mostly the Eight part of the Goods among the *Romans*; whence the Collectors were termed *Octavarii*. But we pay so much Money: And I refer such as desire to know particularly for what things, and how much Custom is due to the *English* Book of Rates (*a*), compared with the 6. 8, 10, 11, 12, 13, 14, 18, Articles of the Union. Whereby the Customs and Duties on Import and Export in *England*, at the commencement of the Union, are thereafter to take place here: Excepting the Duties upon such particular Commodities as persons are exempted from by privat Rights. But we are not for 7 years to pay for Salt made in *Scotland*, the duty payable for Salt made in *England*; and after the said 7 Years we are exempted from the Duty of

(*a*) Our Book of Rates is called an *A, B, C.* of the Customs, *Act 25. Parl. 15. Ja. 6. c.* a particular *Index* of the several Customs Imposed on every Commodity, according to the Letters of the Alphabet.

2 *sh.* and 4 *d.* a Bushel imposed on Home-salt by an *English* Stat. in the 9 and 10. K. W. 3. yet are then to bear a proportion of any other Fund that the Parliament of *Great-Britain* shall at or before expiring of the *septennium* substitute in place of the said 2 *sh.* and 4 *d.* and have an Equivalent in the terms of the Treaty. But during the 7 years, the same Duties are payable for all *Scots* Salt imported to *England*, as for Salt made there: And thereafter the Duty of 2 *sh.* and 4 *d.* is payable for the said Imported *Scots* salt, as well as for *English* salt, to be Levied and Secured in the same manner as the Duties on Foreign salt. Fleashes exported from *Scotland*, and our Ship-provisions, may be salted with *Scots* salt, paying the same Duty as it pays in *England*. But we are not to be charged with the present *English* Duties on stamped Paper, Vellum and Parchment, Malt, Windows and Lights: and we are only chargeable with Duties upon Coal, Culm and Cynders not consumed in *Scotland*.

2. Custom is not to be exacted but for lawful Goods: such as are unlawful being confiscable with the Ship they are in (if put Aboard with the Knowledge of the Master of the Ship) and other lawful Goods belonging to the same owner (a). But no Ship or Goods shall be seized as forfeited for unlawful Importation or Exportation, or Non-payment of any Customs or Subsidies but by the Officers of the Customs, or warrant from the Lord Treasurer, or Under-treasurer, or by special Commission under the Great or Privy Seal (b).

(a) l. 11. §. 2. ff. *de Publican. & Vectigal. Voet. Comment. in Pandect. Lib. 35. Tit. 4. N. 31.* (b) Stat. 13 & 14. Car. 2. Cap. 11.

2. Goods Imported paying Inward Custom, are to be free of Outward Custom if again Exported (a). Who minds to export again imported Goods, for which the Duty was payed, must obtain a certificat from the Customers, expressing the Nature, Colour, Length, Value, Content or Weight thereof; to be shewed to the Customers of the Port where they are to be conveyed, before discharging, in pain of forfeiture of the Goods to be divided betwixt the King and the Prosecuter (b). The Exporter of some Imported Liquors to receive back no part of the Duty, nor be discharged of the security granted for the same (c). The Exporter of some Goods Imported within six Months after Importation, to be Repaid, two third of the Duties paid (d). For Exporting of Imported Goods, Brandy excepted, within a Twelve Month by any *English* Merchant, or within nine Months by Strangers, the Duty shall be repaid, or the Security vacated (e). For the like Export of Goods, two thirds of the Duty to be Repaid, upon the Exporters Oath that they are effectually to be Transported beyond Sea, and not to be Re-landed in *England* (f). 3. Again, by several Acts of Parliament, Draw-backs are allowed for encouraging the Export of some kinds of Goods, whereof the Inland consumpt is not so profitable to the Country, and Proëmiums for the Import of others more profitable. And (g) In all Cases where the Oath of Importer or Exporter is Required to obtain a Draw-back or Allowance for

(a) Act 57. Par. 1. Sess. 1. Ch. 2. (b) 3. H. 7. 7. (c) 1. J. 2. cap. 3. (d) 1. W. & M. Sess. 2. Cap. 6. (e) 4. & 5. W. & M. Cap. 5. (f) 6. & 7. W. 3. cap. 7. (g) Stat. 2. A. cap. 9. Foreign

Forreign Goods, the Oath of the Agent of any Company trading by a Joynt-stock, and the Oath of a Merchants known Servant imployed in making his Entries and paying his Custom is sufficient. By the 6. Article of the Union, the Allowances, Encouragements and Draw-backs for Regulation of Trade; established in *England* at the Commencement of the Union are thereafter to take effect in *Scotland*, with this addition; that when Oats are sold at 15 *shillings Sterling* or under per Quarter, there shall be paid 2 *shillings sterling* for every Quarter of Oat Meal exported in the Terms of Law; and that our Bear exported shall have the same Reward as Barley; and that the Prohibition as now in force by our Law against the Importation of *Irish* or other Foreign Victual do continue till a more effectual way be provided by the *British* Parliament, for discouraging the Importation of Foreign Victual. And by the 8. Article of the said Union, there is allowed 10 *sh.* and 5 *d. sterling* for every Barrel of White-herrings, 5 *sh.* for every Barrel of Beef or Pork salted with Foreign, without mixture of *British* or *Irish* salt, and exported for sale from *Scotland* to parts beyond sea. It being made appear before the Lord Treasurer, Commissioners of the Treasury, or chief Baron of the Exchequer, that a Denizon's Goods for which Custom was paid, had Perished or been taken at Sea; The Merchant may Ship in the same Port other Goods to the value of these lost in Custom, without paying any thing. So be, the proof is Recorded and allowed in Exchequer, and certified to the Collectors of the Customs (a).

3. Acts imposing Custom are to be strictly interpreted (*a*). Because, *Liberatio ab Oneribus est Favorabilis*, and *Onera Rebus imponi est Odiosum*. And in *Dubio contra Fiscum est Respondendum* (*b*).

4. Those who have the Oversight of all Her Majesties Customs are called Commissioners of the Customs : under whom are imployed a great Number of Officers, such as Collectors, Customers, Comptrollers, Surveyers, Registers, Waiters, &c.

5. By the Civil Law some persons were incapable to Farm the Customs ; as those who were in Arrears for former Tack-duties, or otherwise Debitor to the Fisk, Souldiers, Tutors and Curators *ante redditas rationes*. And by the English Law, no Customer, Comptroller, Searcher, Surveyor, of Searchers or their Clerks, Deputies, Factors or Servants should have any Ship, of their own, use Merchandise, keep a Wharf, Inn or Tavern, or be a Factor, Attorney or Host to a Merchant ; in pain of 40 pound to be divided betwixt the King and the Prosecuter (*c*).

*Exchequer
or Public.*

6. Officers of the Customs malversing by concealing and not giving up true Accompts of what they received, are under the check of Law. For an Officer of the Customs concealing any thing duly entered and paid, is to forfeit the triple value of the Merchandize, and to make Fine and Ransom to the King ; and the Prosecuter to have a third of the Penalty (*d*). Customers are to make a true Certificat of Goods Exported after Importing, in pain to Forfeit their

(*c*) *Vox Comment. in Pandect. Lib. 39. Tit. 4. N. 18.* (*b*) *l. 10. ff. de Jure Fisci* (*c*) *20. Hen. 6. 5.* (*d*) *3. H. 6. 3.*

Offices, and make Fine at the Kings pleasure (a). Officers making false Certificats of Goods that should have been Landed, shall lose their Employment, be Incapable of any Trust about the Customs, Forfeit 50 pound, and suffer a Years Imprisonment, and be lyable to what Corporal Punishment the Court of Exchequer shall inflict (b). 7. For that the Collectors of Customs have sometimes abused their Authority, in oppressing Merchants by Unlawful Exactions and Extortion: *Quanta enim Audacia, Quanta Temeritatis sint Publicanorum Factiones, Nemo est qui nescit* (c). Therefore Law hath been careful to bind them to good Behaviour: And to provide against their spunging and oppressing People. To this purpose there are several Edicts in the Civil Law (d): By our Law, the Exacting from People other Customs than what are warranted by Law, or Immemorial Possession, is punishable as Oppression (e). And it is Oppression to take any thing for the Discharge of Publick Dues (f). Customers or Searchers conniving at the Export of forbidden Goods are, by the Act 89, Parl. 11. Ja. 6. to be Tryed Criminally, and their Moveables to be Escheated. Tho the Exchequer and Council us'd to inflict Arbitrary Punishments in such cases.* And the Act 168 of that same King's thirteenth Parliament puni-

(a) 3 H. 7. 7. (b) 13. & 14. Car. 2. Cap. 11. (c) l. 12. prin. ff. de Publican. & Vestigal. (d) l. 1. pr. §. 2, l. 12. pr. §. 1. l. 9. §. 5. ff. de Publican. & Vestigal. (e) Act 54. Parl. 11. Ja. 6. (f) Act 3. Sess. 4. Parl. W. and M. Oppression is ordinarily but a Quality of other Crimes; But yet sometimes special separate Dittays are founded thereon. And some particular Statutes declare the several Kinds of it to be punishable as Reif, or other specifick Crimes therein-mentioned.

shes Malverſing Customers and Searchers, who ſuffer forbidden or Uncuſtomed Goods to be Exported, only by Deprivation and Eſcheat of their Moveables. 8. Nor hath the *Engliſh* Law been leſs careful to prevent ſuch Abuſes. Any Cuſtomer or Comptroller taking Fee from Merchants for entering of their Goods, is to Forfeit ten pound to the King, and five pound to the Merchant *toties quoties* (a). A Collector or Comptroller taking any thing for the Sealing of Goods, to Forfeit twenty pound *toties quoties*. And for Delaying the Merchant in Sealing thereof, to pay forty ſhillings, to be divided betwixt the King and the Merchant (b). If any imployed about the Cuſtoms take a Bribe (c), or connive at any falſe Entry, they ſhall Forfeit 100 Pound, and be incapable of any Imployment under the King. And the Giver of the Bribe ſhall Forfeit 50 Pound. But ſuch Offenders, who ſhall Reveal their Fault within two Months to the Treafurer, Chancellor, Under-Treafurer, or Baſons of the Exchequer, ſhall be Diſcharged. And if any imployed in the Cuſtoms demand or take greater Sums than are due by Law; Or put any Merchant or other out of his Turn, without Order or Approbation of the Managers, or ſuperior Officers of the Cuſtoms, or illegally detain Goods, or neglect to make Repayments and Allowances, or after notice do not give out or execute his Warrant, he ſhall be liable to double Coſts and Damages (d). All Officers

(a) 11. H. 6. 15. (b) 4. H. 8. 6. (c) They are puniſhable not only for their own taking of Money, or good Deeds to betray their Trust; But alſo for what is ſo taken, with their Privy, by their Wives or Servants, l. 1. C. ad L. Juliam. Repetundarum, & Arg. Act 23. Parl. 6. Ja. 6, For qui facit per alium, facit per ſe. (d) 13, & 14. Car. 2. Cap. 11.

of the Customs in the Out-ports, or elsewhere; shall, before the 25th of March next, take an Oath before two Justices of Peace, that they will not receive any other Reward or Gratuity than their respective Sallaries; or their Regular Fees established by Law (a). And for their Neglect or Refusal to take the said Oath, shall Forfeit their Office or Employment. The Persons Administering the said Oath, shall Certifie the same to the next General Quarter Sessions of the Peace of the proper County, to be Recorded there (b). No Fees or Gratuity shall be taken by any Officer of the Exchequer for any payment, Entry, &c. under pain of Forfeiting his Place, and Incapacity to bear Trust, and paying Triple the Value of what was taken. Yet Officers of the Customs duly employed in the Execution of their Office on any Extraordinary Service at Times not Required by Law, may Receive such Recompence from the Merchant, &c. as the Commissioners of the Customs, &c. shall determine (c).

9. In *Holland*, because it hath often happened that Farmers of the Customs, what by Negligence in uplifting the same, what by gratifying Friends with a free Discharge of the Duty of their Goods turn Bankrupt and unable to pay their Tack-duty to the Fisk; they were altogether forbidden to dispense with the Custom of any Goods that are liable to pay Custom (d). And

(a) So by the Instructions to the Justices of Peace, Anno 1655 (Chap. 1. §. 6.) their Oath *de fideli* included a Clause, that they should take nothing for their Office, but what was allowable by Law. And the *Act* 104. *Parl.* 7. *Ja.* 5. Discharges Judges to take other Rewards or Bribes than are permitted by Law, i. e. the *Sportula* or Sentence Money. (b) 6. *W. & M.* Cap. 1. (c) 6. & 7. *W.* 3. Cap. 7. (d) *Vet. Comment. in Pandect. Lib.* 39. *Tit.* 4. *N.* 24.

by the *Act 34. Sess. 5. Parl. W. and M.* Farmers, collectors, Surveyers, and other Inbringers of the Customs, are discharg'd to give any Abatement of the Duties imposed on the foreign Commodities therein mentioned; under the Pain of Deprivation, and losing the Benefit of their Tacks.

10. Exigencies of the Government require that the Officers of the Customs be protected. The *Dutch-law* is very severe to those who resist, insult or use Violence to them in the exercise of their Office (*a*). All persons that shall resist, abuse, beat or wound any Officers of the Customs, or their Deputies, in the Exercise of their Office; shall by the next Justice of Peace, or other Magistrat, be committed to Prison till the next Quarter Sessions, to be fined not exceeding 100 pound, and to remain in Prison till discharged by order of the Exchequer, or till they discover who set them on Work (*b*).

11. Seing Merchants use all ways and means to get off their Goods, Custom free, and to elude the publick. The not entering of Goods and paying Custom for them by the Civil Law inferr'd forfeiture of the Goods only (*c*). But in *Holland* that punishment not being found sufficient to scare people from cheating the Customs, it was aggravated and distinguished with the Loss of Honour, a Temporary Prohibition to Trade, and Fining, or personal Punishment, in case of the Offenders Poverty. By our Law, those who paid no Custom, were once Ordained to be Bannished (*d*): But that went in Desuetude. By

(*a*) *Placit. Ordin. Holland. 17. June 1678 Vol. 3. Pag. 802, 803.*

(*b*) 13. & 14. *Car. 2. Cap. 11.* (*c*) *l. 14. §. de Publican & Vellig.*

(*d*) *Act Vol. Parl. 7. Ja. 1.*

the *Act 15. Parl. 16. Ja. 6.* the Exporting or Importing Goods lyable to Custom, without paying thereof, is punishable by Confiscation of the Owners whole Moveables, and not of the Unentered Goods only. Yet so far as I know, no Mans whole Moveables were ever Escheated for not paying Custom.

12. There is careful Provision made in the *English Statutes*, for securing the payment of Customs. Goods put into any Boat or Vessel to be carried beyond Sea, or brought from beyond Sea and Unshipped to be laid on Land, without payment of, or Agreement for the Duties, shall be Forfeited, one half to the King and the other to the Seizer or Prosecutor (a). Persons assisting in the Landing or Shipping off Goods Prohibited, or for which Duties are payable, without Warrant and Presence of some of the Officers of the Customs, being apprehended by Order of a Justice of Peace, and the Fact prov'd by the Oaths of two Witnesses; shall for the first Offence be committed to the next Gaol, till they find Surety for their good Behaviour; Or till they be discharg'd by the Lord Treasurer, Chancellor, Under-Treasurer, or Barons of the Exchequer: And for the second Offence be committed for two Moneths without Bail, or till they pay the Sheriff five Pound, or be discharged by the Lord Treasurer, &c. If any Goods for which Custom is due be secretly conveyed on Board any Vessel, and be carried beyond sea, without falling under the Discovery of the Officers of the Customs, the Owners of the Goods, or these who Shipped them, shall Forfeit double their Value according to the Book of Rates; Except for

falling

(a) 12. Car. 2. Cap. 4.

Coal, which, so secretly Exported, shall pay double Duty, as by the Act for Tunnage and Poundage. And any Vessel, upon which the Imposition of five shillings *per Tun* is payable, by the 12. Car. 2. Cap. 18. that shall put Goods or Passengers on shore, or into any Boat, without paying Custom and Tunnage, returning into *England* or *Ireland*, shall pay what was formerly due, and Forfeit ten pound. And Pilots, Watermen, &c. bringing Goods from on Board such a Vessel, shall pay the Duty of Tunnage, which the Vessel should have have paid, and Forfeit 40 Pound (a). All persons, who, by way of Insurance, shall undertake to deliver Goods Imported from beyond Sea, without paying the Duties thereof, or any prohibited Goods, and shall deliver or cause deliver the same accordingly, and all who shall agree to pay any Money for Insuring the Conveyance of the Goods Imported without paying the Duties, or any prohibited Goods, or shall receive such Goods, or others before the Duty is paid, shall forfeit *toties quoties* 500 Pound, half to their Majesties and half to the Informer. And if the Insurer or Manager of the Fraud be the Discoverer, he shall not only keep the Insurance Money given him, and be free of any penalty, but shall have half of the penalties imposed on the parties who agreed for the Insurance, or received the Goods. But if the Party Insured make the Discovery, he shall recover back his *Præmium*, get a Moyety of the Forfeiture Imposed on the Insurer, and be discharged of the Penalty to which himself is lyable (b).

(a) 13. and 14. Car. 2. Cap. 11. (b) 4. and 5. W. and M. Cap. 15.

13. By the Roman Law, those things that were to pass Custom-free, behoved to be Entered (a): Lest, under the Cover of free Goods, those lyable to Custom might escape.

14. The Penalty of not Entering Goods lyable to pay Custom, is not incurred by one, who is driven by stress of Weather or Pirates, to Land his Goods at an unusual place (b).

15. If any Seizure be made for not payment of the Duty, the *Onus Probandi*, that the Duties were paid, must ly upon the Person who claims the Goods seiz'd (c).

16. Great Precaution is us'd for Obviating the Escape of Uncustomed Goods. And tho the *Act 57. Par. 1. sess. 1. Ch. 2.* discharges the taking Masters, Merchants, and Mariners Oaths in the Matter of Customs, yet the not payers of Customs and Excise, were afterward allowed to be pursued upon Oath, the Pursuers giving their Oath of Calumny, if required (d): But I don't find, where, by the Law of England, a Merchant can be put to his Oath, for alledg'd Abstracting or Concealing of Uncustomed Goods. Officers of the Customs may enter any Vessels, and even War Ships, to search for prohibited Uncustomed Goods; The latter being lyable, as Merchant Ships are, to all Searches and other Rules (Victualling Bills and Entering Excepted) under pain of 100 Pound. And no Entry of Goods, Inward or Outward, shall pass, without the Merchants, by themselves or their Agents, subscribe a Bill of En-

Making
Oath that
you believe
there is just
reason for
it.

(a) *L. 5. C. de Velligal. l. ult. §. 9. ff. de Publican. & Vellig.* (b) *l. ult. §. 8. ff. de Publican. & Vellig.* (c) *1. Ja. 2. Cap. 3. & 4. Stat. 2. W. & M. S. ff. 2. Cap. 5. Stat. 4. & 5. W. & M. Sess. 4. Cap. 15. & Arg. Decis. June 10. 1631. Peebles contra Scot.* (d) *Act 12. Sess. 1. Parl. 2 Ch. 2.*

try, with the Mark, Number and Contents, or Weight of the said Goods. And no Pacquet Boats shall, without Allowance from the Custom-Officers, Export or Import any Goods, under pain of 100 Pound to be paid by the Master, with the Loss of his Place, and Forfeiture of the Goods (a). If any Person cause Goods (for which Duty is payable, by virtue of 12. Car. 2. Cap. 4. concerning Tunnage and Poundage) to be Landed or Conveyed away, without Entry thereof, and the Customer, Collector, or his Deputy, first agreed with, upon Oath before the Lord Treasurer, any of the Barons of Exchequer, or chief Magistrat of the Place, where the Offence is committed, and Place next adjoyning, the Lord Treasurer, or Baron of Exchequer, or chief Magistrat of the Place, may, within a Month after the Offence committed, issue a Warrant to any Person or Persons, to enter in the Day Time, with the Assistance of a Sheriff, Justice of Peace, or constable, and in case of Resistance, to break open Houses. But if any House shall be search'd upon false Information, the Injured Party shall recover full Damages off the Informer in an Action of Trespas (b). And this Act to continue to the end of the first Session of the next Parliament (c).

17. Sir George Mackenzie (d) holds, That Custom-^{Custom}ers may recover Unentered Goods, even from sin-^{House}gular Successors who bought the same, for a competent Price. And (c) the Kings Impost was found a Debt affecting the price of Wine in the Buyers Hands, preferable to the Sellers Creditor, ^{Officers}

(a) 13. & 14. Car. 2. Cap. 11. (b) This we call an Action for Damages. (c) 12. Car. 2. Cap. 19. confirmed 13. Car. 2. Cap. 7. (d) Observ. on the Act 15. Parl. 16. Ja. 6. (e) Dary, June 10. 1631. Peebles contra Scot. C 2 who

who had Arrested the same. And the Sellers giving of Security for the Duty at the time of the Entry, was not found to hinder the Kings Officer to take himself either to that Security, or to the Merchant, or to the Goods extant unpaid for in the Buyers Hands.

18. Persons Counterfeiting or Razing any Custom-House Warrant, shall Forfeit 100 Pound, and the Vitiated Warrant shall be null (*a*).

(*a*) 13. & 14. Car. 2. Cap. 11.

C H A P. III.

Concerning the Excise.

1. **V**Hether the Word *Excise* be of Dutch Extract, as some think, or if it be *q. d. quid Excisum*, I don't know, nor is it much Material to know it : This however is certain, that the Duty upon Goods so called, is of no long standing with us ; For I can't fetch it higher than an Act of the Convention of Estates in *January* 1644, who for maintaining the Forces then on Foot, fell upon the expedient of raising Money by way of Excise on certain Liquors and Commodities, over and above the ordinary Customs and Duties.

2. An

2. An Excise upon the Inland Salt (*a*) and some Foreign Commodities, and an Excise of 3 shilling upon the Pint of Home Aquavita not made of Malt, and of two Merks upon the Boll of Malt was imposed by the Act 14. *Sess. 1. Parl. 1. Ch.*

2. as a Fund for raising that Kings Liferent Annuity of 40000 *lib. ster.* which Sum was proportioned upon the Shires and Burghs, and the Inlakes of their Excise appointed to be supplied by the Heretors by way of Cess. But several Shires and Burghs having Represented their Grievances (*b*), by the unequal proportioning thereof, to the same Parliament, at their third Session; It was Rectified by the 25 Act thereof. This Excise was prorogated for Five years after King Charles's Death. (*c*).

3. But at length, that the Parliament might not be compelled at every turn to call upon the People for Contributions to support the Royal Dignity; The said Excise of Inland and Forein Commodities was annexed to the Crown for ever (*d*).

4. The keeping up the Excise upon Malt being found inconvenient; for that it prompted the Brewers to make the Drink weak, by taking

(*a*) K. Charles 2. in pursuance of a Design to Improve Scots Salt, that Money might not go out of the Countrey for Forein Salt, bought up the same and Ordained it to be sold out at reasonable Rates, which was called the *Pre-emption of Salt*. But the Officers and Servants having taken Exorbitant Prices, and remote Places, such as *Galloway* and the *Highlands*, being ill furnished; And People fearing, that such a thing might be a Preparative for the Pre-emption of Coal, Corn, &c. which occasioned a general Clamor in the Countrey: To still the same, and to remove all such Jealousies and Prejudices, the Pre-emption of Salt was discharg'd by the Act 1. *Sess. 4. Parl. 2. Ch. 2.* (*b*) 'Tis observable, that the Word Grievances is not to be found in any of our Acts of Parliament before this. (*c*) Act 8. *Parl. 3. Ch. 2.* (*d*) Act 2. *Parl. 1. Ja. 7.*

as many Pints out of the Malt as they could, which hindred much the Consumption of Malt; Whereas a Duty imposed upon the Liquor indefinitely, occasions the Brewing of strong Drink. The two Mark upon the Boll was dissolved from the Crown, and turn'd into 3 *d.* upon the Pint of Ale and Beer, 3 *sh.* upon the Pint of Aquavita or strong Waters not made of Malt, 6 *sh.* upon the Pint of Foreign Aquavita, Brandy or strong Waters, and 30 *sh.* upon the Barrel of Foreign Beer. Which Equivalent was annex'd in place of the more uneasy Duty upon Malt (*a*). And there has been several additional temporary Excises imposed, for supplying the Exigencies of the Government, over and above the annex'd Excise.

5. The Parliament 1661 having erected Fishing Companies, by the 38 Act thereof, Foreign Salt to be employed upon that Trade (*b*) was declared free of Custom and Excise. But Fishes consumed in the Country were deprived of that Privilege by several Acts of Exchequer. And thereafter for securing the Kings Customs and keeping out superfluity of Foreign Salt, whereof vast Quantities were imported upon pretext of serving the Fishing: By the 12 Act *par. 2. Ch. 2.* The Importers of Foreign Salt were ordained to pay the Excise thereof, and that to be repaid by

(*a*) Act 28. *Sess. 5. Parl. K. W.* (*b*) The Ordering and Disposing of Trade with Foreign Nations, and the Laying Restraints and Impositions upon Foreign Imported Commodities, was Declared by the Act 27. *Sess. 3. Parl. 1. Ch. 2.* to be a Branch of the Royal Prerogative, competent to all Princes by the Law of Nations. But this Act was Rescinded, as Dangerous to the Liberty of the Subjects: Reserving His Majesties Customs and Impositions as then Established, *W. Parl. 1. Sess. 9. Cap. 7.*

the Customers, to such as could prove the imploy-
ing of the Salt upon Fishes.

6. But now by the 7th Article of the Union, we are lyable to the *English* Excises upon all exciseable Liquors, except that there is a more easie duty upon the Barrel of our Ale or Beer sold by the Brewer at 9^{sh.} 6 d. *sterl.* (a); And that we are not to be charg'd with any Imposition on Malt during the present War (b); and have a seven Years Privilege as to Salt made in *Scotland* (c). By the 8th Article all Foreign Salt imported to *Scotland* is chargeable at Importing with the same Duties as in *England*. Which (because the Duties of great Quantities thereof may be heavy on the Merchants Importers) is Ordained to be Cellar'd and Lock't up under the Keys of the Importer and the Officers appointed for Levying the Duties thereof. That the Merchant may have any Quantity his occasion requires, not under a Weigh or 40 Bushels at a time, giving security for the Duty of what he receives payable in six Months. But of all the New Impositions (as a polite and judicious Writer (d) observes none are so dangerous to the very being of Trade, as the high Duties laid upon Salt; which affects the common people in the whole course of their Living, (their chief Nourishment being salted *Flesh*) and may bring a general prejudice to Navigation.

7. For clearing the present state of Excise under the Union-establishment, I shall treat first concerning the Managers and Officers of Excise.

2. Of the Persons lyable to the Excise, and what

(a) *Vid. infra* Sect. 3. (b) *Art.* 13. and 14. of the Union.
(c) *Vid. sup.* Chap. 2. N. 1. (d) *Davenants* Essay on the Methods of making a People Gainers in the Ballance of Trade, Sect. 4.

legal checks they are under, to prevent their eluding the same. 3. Of Excisable Liquors, and the respective Rates or Quantities of the Excise-duty, and of the Allowances and Eases given to persons liable for the same. 4. How the Excise is to be entered and paid. 5. Of Action competent about Excise Matters.

S E C T. I.

Concerning the Managers and Officers of Excise.

1. **T**HE *English* Excise Revenue was managed at first by Commissioners and Sub-commissioners : but now there are no Sub-commissioners. No Member of Parliament can be a Commissioner or Farmer of the Excise (a). Nor may any Commissioner of Excise directly or indirectly farm the same ; Nor is any Farmer capable to be a Commissioner : And Acts done by persons so disabled in either Capacity, are not only void in Law, and annul the Farm and Commission ; but also infer an utter incapacity to be either Farmer or Commissioner of the Excise Revenue. Again, no Commissioner or Farmer of Excise is capable to act as a Justice of Peace in matters of Excise (b). The Commissioners of the Excise at London are Judges in the first instance in Controversies betwixt their under Officers and the Brewers, &c. But our Commissioners have no Jurisdiction, but *only* allennary power to gather in and receive the Revenue. Nevertheless they can appoint Supervisors, Gaugers, and other inferior Officers : and, I

(a) 11. & 12. W. 3, Cap. 2. (b) 25. Car. 2. Cap. 11.

think, may compound with any Inn-keeper, Victualler or Retailer for their Excise-duty (a).

2. Gaugers are authorized to give the stamp of Allowance to all Vessels containing Excisable Liquors. By the 15. *Car. 2. cap. 11.* two able Artists are to be appointed, one by the Commissioners or Farmers of Excise, and the other by the Brewers of the place, to compute the just Contents and Gauge of all Brewing Vessels belonging to Brewers of Beer or Ale to sell, according to the Measures Establish'd by Law; And to deliver one Copy thereof to the Commissioners or Farmers, and another to the respective Brewers (b). Gaugers may by Day, or in the presence of a Constable or other Officer by Night, enter into any place belonging to Brewers, Distillers, Inn-keepers, Victuallers or other Retailers, and take an account of their excisable Liquors, by Gauging the Vessels containing the same, and make return thereof to the Commissioners of Excise, leaving a Copy under their Hands with the Brewers and others foresaid, which Return is a charge on the Brewers, &c. (c). The Gauger shall within three days after the end of every Week leave with the Brewer or Retailer, or their Servants, a true Copy of every Charge made by him in such a Week. And in case of Refusal, or if he shall charge any Brewer or Retailer more than such a Copy contains, he Forfeits ten Pound. And they are to leave Notes with all common Brewers or their Servants of every Gauge, if demanded, containing the Inches and Tenths of the backs, and wants

(a) 12. *Car. 2. Cap. 23. & 24.* (b) 15. *Car. 2. Cap. 11. vid. supra Ch. 1. N. 2. P. 9.* (c) 12. *Car. 2. Cap. 23. & 24.*

of Tuns, on Penalty of Fourty shillings half to the King, and half to the Informer (*a*). Gaugers have power to Gauge all Coppers, Fats and Vessels in any Brew-house or other places belonging to or used by Brewers, Inn-keepers, Victuallers or Retailers of Beer or Ale; And to take account of Beer, Ale and Worts; and to make Returns in Writ to the Commissioners of Excise, to be a charge upon the Brewers. And where the Gauger finds any Worts amissing, or not fairly let down into the Tun, he may charge so much Beer or Ale as the Worts amissing would reasonably have made (*b*). If any small Beer, or old return'd Drink, be mix'd with strong Beer or Ale remaining in the Brew-house, and the mixture added to a Guile of New-drink, the Gauger shall charge the whole as New (*c*). A Gauger may taste the Drink upon any Brewers Dray, and may enter into any Inn-keeper or Victuallers Cellar or other Rooms to taste their Drink. Gaugers may enter the Distilling-house of any Distiller, and take account of any decayed Wines, Cyder or other Materials fit for Distillation. And may take off the Head of any Still not at Work, to see what Materials it is charged with: and if at work, may stay in the Distilling-house till the Still is wrought off (*d*). Gaugers and Officers of Excise should keep an account of all Mollossius-Wash in Distillers hands, and upon decrease thereof may charge them with so much Low-wines (*e*), as a Fourth part of the Wash shall amount to, and with so much proof Spirits (*f*) as two Third parts of the Low-wines so charged shall

(*a*) 7. & 8. W. 3. Cap. 3. (*b*) 1 W. & M. Cap. 24. (*c*) 8. & 9. W. 3. Cap. 19. (*d*) 7. & 8. W. 3. Cap. 3. (*e*) *i. e.* Spirits of the first Extraction; commonly called here Single Burn. (*f*) *i. e.* Spirits of the second Extraction. amount

amount to (a). And upon the decrease of Wash made from malted or unmalted Corn, the Gauger may charge the Distiller with so much Low-wines as One Fourth of the Wash so decreased shall amount to, and with so much proof Spirits as Three Fifths of the Low-wines amount to. And upon the Decrease of Wash from Cyder or Perry, they may charge the Distiller, upon whom the Decrease is found, with so much Low-wines as comes to a Fifth part of the Wash, and with so much proof Spirits as half of the Low-wines amounts to (b). Spirits drawn from any mixture with Wash or other Liquors, except Water, are chargeable with the Duty on Low-wines drawn from Foreign Materials (c). Bribes are not to be given to, or taken by any Gauger, to make a false Return or Report to the Excise Office, of any exciseable Liquors, or to omit his Duty under the pain of Ten pound to be payed by the Giver, and as much by the Receiver, a third to the King, a third to the Poor, a third to the Informer, to be adjudged by two Justices of the Peace or chief Magistrat of the Place where the Offence is committed, and to be Levied by distress (d), and sale of the Offenders Goods: And the Offender for want of sufficient distress to be Imprisoned three Months without Bail (e).

3. Distillers refusing to permit Gaugers in day-time, or in presence of a Constable under night, to enter their House, Distilling-house, Store-house, or other places belonging to or us'd by them, shall Forfeit fifteen pound, one half to the King, and the other to the Informer [f]. Com-

(a) 10. & 11. W. 3. Cap. 21. (b) 4. & 5. Anna R. (c) 10. & 11. W. 3. Cap. 4. (d) i. e. Seizure and Attachment of Goods. (e) 15. Car. 2. Cap. 11. [f] 1. W. & M. Cap. 24. *judg.* the two Acts of 12. Car. 2.

mon Brewers, Inn-keepers, or Victuallers, shall Forfeit 20 pound, if they refuse to permit any Gauger in the day-time, or with a Constable in the night, to enter their Houses, Brew-houses, Store-houses, or other places us'd by them, or permit not the Gauger, being entered, to stay and take an account of the severall Worts as they are brewed off, and see the strong and small Drink cleansed, & Gauge the Mesh-tun, or take an account of the Malt from which the Worts are drawn. Brewers, Distillers, or others, hindering any Officer of the Excise to enter to search for private Backs, Tunns, or other Vessels, shall Forfeit 20 pound. If any Inn-keeper, or Victualler, hinder a Gauger to enter his Cellar, or other Rooms, or being entered, to taste the Drink there, he shall Forfeit five pound *toties quoties*. And if any Distiller hinder the Gauger to enter and stay in the Distill-house, till he see the Stills wtought off, and examine the Materials therein, he shall Forfeit 20 pound. If Makers or Retailers of Vinegar, Cyder, Mead or Sweets [a], refuse to permit the Gauger to enter and take account of their Liquors, they shall Forfeit 15 pound, half to the King and half to the Informer [b]. If any common Brewer, or other person, shall oppole the Gauger, or Officer of Excise, in searching for private Pipes or Holes, &c. they Forfeit 50 pound, half to the King, and half to the Informer [c]. If Distillers hinder any Gauger or Officer to search for private Pipes, Holes, or other Conveyances from one

[a] All Liquors made by Infusion, Fermentation, or otherwise, from Forein Fruit or Sugar, mixt with other Materials, and commonly used for recovering, increasing, or making of any kind of Wine, are called Sweets, 10. & 11. W. 3. Cap. 21. [b] 7. & 8. W. 3. Cap. 3. [c] 8. & 9. W. 3. Cap. 19.

Vessel or Place to another, they shall Forfeit, 100 pound, half to the King, and half to the Informer [a]. If any Distiller or other person hinder them to search for privat concealed Stills, Backs, or other Distilling Vessels, they shall Forfeit 200 pound to be so divided betwixt the King and the Prosecutor [b].

4. The inferior Officers of Excise are Ordained to continue in their respective Employments, notwithstanding the Death or Removal of the Commissioners who put them in, unless turn'd out by them [c]. Because tho ordinarily *Mortuo Mandatore Expirat Mandatum*: Yet if by the Death of the Commissioners of Excise, or by Revocation of their commission, the Authority of Inferior Officers flowing from them should fall, there would be a prejudicial Interruption in the due uplifting of the Excise Duties.

5. No person can act as a Commissioner or Officer of Excise till he hath taken the Oaths of Allegiance and *de fideli*, and subscribed the former with the Assurance, before two Justices of Peace in the County where the employment is to be, or before a Baron of the Exchequer. By the Oath *de fideli* they are to swear to execute the Office truly and faithfully without Favour or Affection; And that they shall from time to time true account make, and deliver to such Person or Persons as Her Majesty shall appoint to receive the same; and shall take no Fee or Reward for the Execution of the Office, from any other Person than from Her Majesty, or those whom Her Majesty shall appoint in that behalf. The taking of which Oath the Justices of Peace shall certifie to

[a] 10. & 11. W. 3. Cap. 4. [b] 10. & 11. W. 3. Cap. 4. & 21.
[c] 7. & 8. W. 3. Cap. 3.

the next Quarter Sessions there to be Recorded [a]. No Money or Reward is to be taken or demanded by any Commissioner or other person imployed about the Excise, except from their Majesties on pain of forfeiting their Offices, and incapacity of any Office in Excise for the future; Upon proof thereof by two or more credible Witnesses before any two Justices of Peace (b). No Supervisor, Gauger or other Officer concerned in the Excise shall meddle in the Election of Members of Parliament, under the pain of 100 pound to be divided betwixt the Informer, and the poor of the Parish, where the Offence is committed, and incapacity of bearing any Office of Trust (c). Any Officer of the Excise conniving at the clandestine Importation of *French Brandy*, or concealing the same, or compounding without Licence with any person concerned, are to be incapable of any Office about the Revenue, and to forfeit 500 pound to be divided betwixt the Queen and the Informer (d).

[a] 12. Car. 2. Cap. 23. & 24. 15. Car. 2. Cap. 11. (b) 1. W. & M. Cap. 24. (c) 5. & 6. W. & M. Cap. 20. (d) 1. A. Sess. 1. Cap. 14.

S E C T. II.

Of the Person's lyable to Excise, and the legal checks they are under to prevent their Eluding the same.

THE Persons lyable to Excise are Brewers, Retailers, Distillers, and makers of Vinegar, Cyder, Mead, Sweets, &c. of whom I shall treat in order as they ly.

i. No

1. No Brewer or Inn-keeper can act as a Justice of Peace in matters of Excise (a). And the late Proclamation names the eldest Magistrate in other Royal Burghs than *Edinburgh*, to be Justice of Peace in the Burgh where he Resides, if not a Brewer there. Yea, by the 23. H. 8. cap. 4. a Brewer is prohibited to be a Cooper: And ordained to sell his Beer and Ale at such Rates as the Justices of Peace shall determine. Brewers and Retailers of Beer or Ale are ordained to sell the same at the usual Rates; but Brewers may take the Excise over and above (b). By the 15. Car. 2. cap. 11. If any common Brewer, Inn-keeper, Victualler or Retailer, without giving notice at the next Excise Office, erect, set up, alter or enlarge any Tun, Fat, Back, Cooler or Copper, and use the same, or shall make use of or keep any private conceal'd Store-house, Cellar or Place for laying Beer or Ale or Worts in; he forfeits 50 pound, and the Possessor of the House where any such thing is found doth also forfeit 50 pound. Of which Fines one third goes to the King, a third to the poor, and another third to the Informer: Besides that the discovered, unlawfully concealed or altered or enlarged Vessel, with all the Liquor therein, may be adjudged and sold by the Justices for the poor's use. But thereafter (c), a further check of 200 pound of penalty, half to the King and half to the Informer, was put upon common Brewers, who were not found sufficiently restrained by the former Law, from privately setting up, altering or enlarging their Vessels, without giving notice to the Excise Office. No

(a) 15. Car. 2. Cap. 11. (b) 12. Car. 2. Cap. 23. & 24. (c) 3. & 9. W. 3. Cap. 19.

48. *The Duty and Powers of*

common Brewer shall deliver out any Drink to their Customers, but betwixt three a Clock in the Morning and nine at Night, from the 25 *March* to the 29 *September*, and between 5 in the Morning and 7 in the Evening from the 29 *September* to the 25 *March* on pain to forfeit 20 shillings for each Barrel otherways carried out, and common Brewers or Retailers converting small drink into strong by Mixture after the Gauging, without notice to the Gauger, or concealing ungaged drink, forfeit 20 shillings for every Barrel, one third to the King, one third to the poor, and one third to the Informer [a]. If any common Brewer, Inn-keeper or Victualler, cleanse, carry or remove out of his Brew-house any part of his Guile or Brewing, before the whole is brewed off, and in his Tuns, Backs or Coolers, without giving notice to the Supervisor or Gauger, he shall forfeit two pound for every Barrel, to be divided betwixt the King and the Informer [b]. No common Brewer who hath compounded for the Duties of his own Excise, shall, during the Term of the Composition, suffer any Beer or Ale to be brewed in his Brew-house for any other common Brewer, without previously acquainting the Commissioners or Farmers of Excise, & paying the Excise, both he that brews, & he for whom, shall forfeit for every Barrel five pound, to be divided betwixt the King and the Informer (c). If any privat person inhabiting in a Mercat-town where there is a common Brew-house, lend their immoveable or fixt brewing-vessels, or suffer any Ale or Beer to be brewed therein, except for their own Families

(a) 15. Car. 2. Cap. 11. (b) 7. & 8. W. 3. Cap. 3. (c) 15. Car. 2. Cap. 11.

or for Charity, or *gratis*, they shall forfeit 50 pound to be divided betwixt the King and the Informer, if pursued within six Moneths after the Offence [a]. A common Brewer or his Servants must declare to the Gauger how much of each Guile he intends to make strong, and how much small Drink, before any part is cleansed or removed out of his Tuns, on pain to have the whole Guile charged strong, and to forfeit twenty shillings for each Barrel therein-contained. And if any increase be made of the strong after the length is declared, the Brewer shall lose for every Barrel of increase five pound; and the servant concerned or assisting in making the increase shall forfeit 20 shillings for each Barrel thereof, or suffer three Months Imprisonment. These Fines are to be divided betwixt the King and the Informer (b). If any Brewer or Innkeeper, upon or after carrying out of his Drink do mix small with strong upon his Dray, or in any Victuallers Cellar or else where, he shall forfeit five pound *toties quoties*, to be divided betwixt the King and the Informer (c). Common Brewers or Retailers of Beer or Ale, making use of any Molossus, coarse Sugar, Honey or other Composition, in Brewing or Working of Ale or Beer, or common Brewers taking into their custody any Quantities of these Ingredients, exceeding Ten pound, to forfeit *toties quoties*, respectively, 100 pound half to the King and half to the Informer. And the Servant or other Assistant in the using any Molossus, coarse Sugar, Honey, or extract of Sugar, in the Brewing or Working of Ale or Beer, or in conveying the

(a) 22 & 23. Car. 2. Cap. 5. (b) 8. & 9. W. 3. Cap. 19. (c) 7. & 8. W. 3. Cap. 3. same

same to any place belonging to the Brewer, shall forfeit 20 pound, or suffer three Months Imprisonment (a). Every common Brewer having any Pipe or stop-cock under Ground, or any other Pipe or privat Conveyance in or about his Brew-house, by which any Beer, Ale or Worts may be conveyed, from one Vessel to another, or to any other place, shall forfeit 100 pound, half to the King and half to the Informer. Without prejudice to the using of publick Pipes or Conveyances above ground.

2. Any person making or keeping any Materials fit for Distillation, and having in his possession any Still containing 20 Gallons or more, shall be esteemed a common Distiller for Sale, and lyable to the Duties and Penalties of Excise (b). If any Distiller or maker of Low-wines shall, after an account hath been taken by the Gauger of the Quantity thereof, sell or dispose of, or Remove the same without drawing them off a second time, he shall Forfeit five shillings per Gallon, half to the King, half to the Informer (c). No Distillers, or others, drawing Low-wines, or Spirits, from prepared Corn, shall prepare any Wash from Molossus, or any Materials, or receive the same from any other Person, until they have drawn off all the Liquors made from Corn, on pain to forfeit 5 lib. for each Barrel of such Liquors made of Corn, found undistilled or drawn into Low-wines, half to the King and half to the Informer (d). If any common Distiller conceal, or convey away any Low-wines, Spirits, or strong Waters for Sale, from the sight of the Gauger, he shall Forfeit five shillings per Gallon (e). No common Distil-

(a) 10. & 11. W. 3. Cap. 21. (b) 8. & 9. W. 3. Cap. 19. (c) 1. W. & M. Cap. 24. (d) 7. & 8. W. 3. Cap. 3. (e) 3. W. & M. Cap. 15. ler

ser shall set up, make use of, or alter any Tun, Cask, Wash-batch, Copper, Still, or other Vessel for Brewing, or making Worts, Wash, Low-wines, Spirits, or strong Waters for Sale; Nor keep or use any such private Vessel, or any privat Store-house, for Laying of any Wash, Low-wines, or Spirits, without previous notice given at the next Excise Office, on pain to Forfeit 20 Pound *toties quoties*; And the Possessor of any House or Place, where any such private or concealed Tun, Cask, Wash-batch, Copper, Still, Store-house, or Cellar, shall be discovered, to Forfeit 70 Pound, half to the King, and half to the Informer (a). Distillers should Draw Low-wines from Malt-drink intirely, without Mixture of Molossus-wash or Tilts; or other Materials. And Low-wines drawn from Malt-drink so mixed, shall be charged with the Duty of 12 Pence a Gallon. No Distiller shall distill or carry out Low-wines, or Spirits, to any of their Customers, unless between five in the Morning and eight at Night, from the twenty ninth of *September* to the twenty fifth of *March*, and between three in the Morning and nine in the Evening from the 25 of *March* to the 29 of *September*, on pain of ten Pound for each Offence, half to the King, and half to the Informer (b). If Distillers keep any private Pipe, hole, or other Conveyance from one Vessel or Place to another; By which, any Wash, or other Liquors fit for Distillation, may be conveyed, they shall forfeit 100 pound, half to the King and half to the Informer (c). Distillers keeping any private conceal'd Still, back or other Vessel fit for Distil-

(a) *Ibid.* & 8. & 9. W. 3. Cap. 19. (b) 7. & 8. W. 3. Cap. 3.
(c) 10. & 11. W. 3. Cap. 4. D 2 ling

ling, or any person in whose Custody the same is found, shall forfeit 200 pound, half to the King and half to the Prosecuter (a).

3. For every Barrel of Vinegar or Liquor prepar'd for Vinegar, or Sweets conceal'd or convey'd away from the View of the Gauger, the Maker thereof shall forfeit two pound, half to the King and half to the Informer. And for every Hoghead of Cyder so conceal'd or convey'd away, the Cyder Maker shall pay twenty pound, and so proportionably for greater or lesser Quantities. And for every Gallon of Mead so conceal'd or abstracted, the Maker thereof shall forfeit 5 shillings, half to the King and half to the Informer. No maker of Vinegar or Sweets shall sell, deliver or carry out any to Customers, except betwixt five in the Morning and eight of the Clock at Night, from the 29 of September to the 25 of March, and between three in the Morning and Nine at Night, from the 25 of March to the 29 of September, under the pain of 40 shilling per Barrel, half to the King and half to the Informer (b). No Vinegar maker shall receive into his Custody any Liquors proper to be made into Vinegar, nor carry out any Vinegar in Casks, or by the Gallon without notice to the Gauger, unless between 7 in the Morning and 5 at Night, from the 29 of September to the 25 of March; and between 5 in the Morning and 7 in the Evening, from the 25 of March to the 29 of September, under pain of 50 pound, half to the King and half to the Informer (c). No Sweet maker shall set up or make use of any steeping-tub, Tun, Cask or other

(a) *Ibid* & Cap. 21. (b) 7. & 8. W. 3. Cap. 3. (c) *Ibid*. & 7. W. 3. Cap. 21. Vessel

Vessel for the making or keeping of Sweets, without notice given at the next Excise Office upon pain to forfeit 50 pound, half to the King and half to the Informer [a]. Vinegar makers must shew any Liquors they take in to the Gauger, before the mixing of them with other Liquors or Materials, on pain to forfeit 20 pound. And if they keep private Store-houses, Cellars or other places, for making, laying or keeping any Vinegar, Vinegar-beer, or Liquors preparing for Vinegar, without acquainting the Excise Office, they shall forfeit 50 pound; which Penalties are to be divided betwixt the King and the Informer [b]. No Brewer or maker of Cyder shall deliver to any Distiller or Vinegar maker any Wash, Tilts, Ale, Beer, Vinegar-beer, or cyder, without acquainting the Gauger within whose District he lives, on pain of 20 shillings *per* Barrel, half to the King and half to the Informer [c].

(a) 8 & 9. W. 3. Cap. 22. (b) 10. & 11. W. 3. Cap. 21. (c) 8. & 9. W. 3. Cap. 19.

The Duty and Powers of

S E C T. III.

Concerning Exciseable Liquors, and the respective Rates or Quantities of the Excise duty : And the Allowances and Eases given to Persons liable for the same.

1. **B**y the *English Statutes* [a], the Barrel of strong Beer and Ale above six shillings, pays of present Excise Duty 4 *shill.* and 9 *d.* the Barrel of small Ale or Beer at 6 *sh.* or under, pays 1 *sh.* 3 *d.* Metheglen or Mead pays per Gallon, Wine Measure 10 *d.* single Brandy imported pays per Gallon 3 *sh.* 8 *d.* Double Brandy imported 6 *sh.* 8 *d.* and no Foreign Brandy or Spirits are to be imported in any ship under 15 Tuns of Burden, except for the use of the Sea-men on Board, not exceeding a Gallon for each Sea-man, on Forfeiture of the Brandy or value, a Moyety to the King, and a Moyety to the Informer [b]: Nor to be Imported in any cask or Vessel under 60 Gallons on pain of the like Forfeiture, to be applyed in the like manner [c]. But now by the 7 Article of the Union the thirty four Gallons *English* Barrel of

(a) 12. *Car.* 2. *Cap.* 23. & 24. 4. *W. & M.* *Cap.* 3. 5. & 6. *W. & M.* *Cap.* 7. & 20. The Liferent Excise granted to King *Charles* 2d, by the foresaid Act 23, being continued and kept up by Statutes in the Reigns of *K. W.* and *Q. M.*, *K. W.* and our present Sovereign Queen *Ann.* (b) 12. & 13. *W.* 3. *Cap.* 11. (c) 4. & 5. *W. & M.* *Cap.* 5. The Importing of strong Waters, *Aquavite.* or Beer, (except Black or Spruce Beer) to *Scotland*, was once discharg'd, under pain of Escheat thereof, *Act* 7. *Sess.* 3. *Parl.* 1. *Ch.* 2. because they prejudged the Sale of Barley, our great Native Commodity. But the *Act* 2. *Sess.* 4. of that same Kings 2d. *Parl.* did License the Importation of Brandy and Mum, or *Bremer* Beer, and Imposed Duties of Custom and Excise upon the same.

Beer or Ale [a] amounting to 12 Gallons of present Scots Measure, sold here by the Brewers at 9 sh. 6 d. excluding all Duties, and Retailed, including Duties and the Retailers profit at 2 d. the Scots pint, is only lyable upon the account of the present Excise to 2 shillings. This payment of the Excise Duty for Beer and Ale, the Privy Council in their late Proclamation concerning the Rates and Duties of Excise have interpreted thus; strong Beer or Ale above 11 sh. 6 d. Duty included [b], pays per Barrel 4 sh. 9 d. strong Beer or Ale from above 6 sh. to 9 sh. 6 d. the Barrel, Duty excluded, pays 2 sh. small Beer or Drink under 6 sh. the Barrel, 1 sh. 3 d. Cyder or Perry imported pays 12 lib. 10 sh. per Tun, and Home Cyder and Perry pays 10 sh. 3 d. per Hogshead, containing 63 Gallons Wine Measure [c], Verjuice pays 6 sh. 3 d. [d]. Mum Imported pays per Barrel containing 32 Gallons Wine Measure one pound 5 sh. [e]. Sweets pay per Barrel containing 31 Gallons one two part, one pound 16 sh. Vinegar pays per Barrel, containing 34 Gallons Ale Measure 8 d. [f]. The Gallon Wine Measure of Low-wines drawn from Forein Materials, or any Mixture therewith pays 6 d. Low-wines from Wash made of Malt or Corn, or from Brewers

(a) Thirty Six Gallons of Beer, and Thirty Two of Ale, according to the Ale Quart in Exchequer, go to a Barrel of Beer and Ale in London, and within the Bills of Mortality. But Thirty Four Gallons are reckoned a Barrel of Beer or Ale in all other places of England, 12. Car. 2. Cap. 23. & 24. junct. 1. W. & M. Cap. 24. (b) Whereby the Duty of Two Pennies Scots on our pint, granted by Act of Parliament to Edinburgh, and some other Burghs, is excluded. (c) 12. Car. 2. Cap. 23. & 24. junct. 1. A. Sess. 1. Cap. 3. (d) 7. & 8. W. 3. Cap. 3. junct. 12. Car. 2. Cap. 23. & 24. (e) 12. Car. 2. Cap. 23. & 24. 4. W. & M. Cap. 3. 5. & 6. W. & M. Cap. 7. & 20. 1. A. Sess. 1. Cap. 3. (f) 10. & 11. W. 3. Cap. 21.

Wash [*a*] or Tilts, one penny, and Low wines from any other Native Materials 3 half-pence [*b*], Strong-waters and Aquavita, pays 2 pence per Gallon, Spirits made of Wine or Cyder imported, pays 4 *d.* per Gallon [*c*], Spirits or Brandy imported from *Guernsey* or *Jersey* pays per Gallon 8 shillings; and all other Exciseable Liquors brought from the said Islands [except Beer, Ale and Mum] pay the same Duties as the like Liquors made in *Great-Britain*, are chargeable with [*d*].

2. But common Brewers, not selling by Retail, in *London*, and within the Bills of Mortality, are allowed, out of the Gaugers Returns, three of twenty three Barrels of Beer, and two of twenty two Barrels of Ale, for wast by filling and leakage. And Brewers without the Bills of Mortality are allowed 2 and one half of twenty three Barrels whether Beer or Ale. Which allowance they forfeit for six Months, beside other Penalties, by willingly making false Entries(*e*). And where warm Worts are gaug'd, the Brewer, Inn-keeper or Retailer is to have allowance of a tenth part thereof for Wash(*f*) and Wast(*g*).

3. But here, *October* 1. 1707, the Justices of Peace of *Midlothian*, at their General Meeting, were of Opinion, that the different way of Malting and Brewing in *Scotland* from that in

(*a*) Distilling-wash, (which is either made of Molossu, or of Corn) is Raw-worts, or other Materials Fermenting, in order to Distillation. (*b*) 22. & 13. *W.* 3. *Cap.* 11. *Junia.* 4. & 5. *Anna.* & 3. *A.* (*c*) 12. *Car.* 2. *Cap.* 23. & 24. (*d*) 2. *W. & M.* *Cap.* 9. 12. & 13. *W.* 3. *Cap.* 11. (*e*) 12. *Car.* 2. *Cap.* 23. & 24. 1. *W. & M.* *Cap.* 24. (*f*) 1. *W. & M.* *Cap.* 24. *i. e.* The thick Stuff that remains after the clear Wort is let down into the Tun. (*g*) *i. e.* That part of the Wort that evaporates into Smoke by the Heat.

England, required a greater Allowance than a tenth part of Warm-worts for Wash and Wast. But we must expect the final Determination of that matter from their next General Meeting, or from the Parliament of *Great-Britain*. And in respect of the difference whereby the Brewers sell or give out their Liquors, and the Standart of the *Stirling Jugg*, the said Justices ordained all these to be changed, and reduced to the foresaid Standart betwixt and the first of *November* next: And the Brewer failzieing so to reduce his Barrells against that day, and thereafter making use of any of them unreduced, to forfeit the same with the Liquor therein, and also five Shilling *sterling*. And ordained the Coopers imployed by Brewers, to mark the Barrells they make with their Names, and the number of Gallons they contain: And for each Barrell that shall be found to differ from the *Stirling* Standart, the Cooper who made it, to be liable to the Brewer for any Damages he shall sustain thereby, and for ten shilling *sterling* of penalty. Which Confiscation and Penalties should be prosecuted at the *Fiscals* instance, and disposed of at the sight of the Justices. Again, The said Justices of Peace recommended to the *Dean of Guild* of *Edinburgh* to order his Officer to see Barrells measured and marked with his Mark.

An Officer of a Court who prosecutes.

S E C T. I V.

Concerning the Entry of Excisable Liquors, and Payment of the Excise.

** An Officer who holds a particular Court & regulates chiefly matters relating to Buildings within a Corporation & other small matters.*

I, **F**OR Ascertaining the payment of Excise the Methods of Gauging and Entry are used: Of the former whereof, I have

spoken

spoken already (a). An Office of Excise is to be kept in every Market-town, on every Market-day, and a Person to be Deputed to attend there, for receiving Entries and Duties of Excise from nine in the Morning till twelve, and from two till five Afternoon, on pain of ten pound for not attending the Office each Market-day, to be paid by the Commissioners, Farmers, &c. half to the King and half to the Informer. All common Brewers, not making due and particular Entry at the Excise-office once a Week, of what they Brew in that Week, forfeit 15 pound, and Retailers not making entry once a Moneth of what they Retailed in that Moneth, forfeit ten pound if an Inn-keeper, and 40 shillings if another Retailer. Of which Fines and Forfeitures three fourths go to the King, and one fourth to the Informer after Charges deducted (b). Brandy going Coast-ways is not to be landed without Entry: under pain of forfeiting double the value (c).

2. Both the *Scots* and *English* Laws do oblige people to the due payment of Excise by penal *Certifications* (d). By the Act 14. *Seff.* 1. *Par.* 1. *Ch.* 2. the Goods of Deficients in payment of the Excise were ordained to be pounded and apprised at the next Parish Church-door: which is like the Privilege given to Ministers, for payment of whose stipends Goods pounded may be apprised upon the Ground where they are, without necessity of carrying them to Mercat-crosses (e). The

(a) *Vid. sup. Seff.* 1. *N.* 2. (b) 12. *Car.* 2. *Cap.* 23. & 24. (c) 15. *Car.* 2. *Cap.* 11. Entry of Brandy going by Coast-cocket is required, tho no Duty can be exacted for the same, lest, under the Cover thereof, Uncustomed Brandy might be smuggled. (d) *Certification* (a *Scots* Law Term) is a Declaration of the Penal Consequences of Disobedience to Law. (e) *Act* 21. *Seff.* 3. *Parl.* 1. *Ch.* 2. Excise

Excise of Foreign Liquors must be payed in Money upon entry before Landing: and a warrant must be obtained from the Excise Officer for Landing; on pain of forfeiture of the Goods or value, half to the King, half to the Informer (a). Common Brewers not clearing the Duty of Excise within a week, after they make or should make their Entry, shall pay the double: three fourths of which Penalty belongs to the King, and one fourth to the Informer, after Charges deducted. And no Beer or Ale is to be delivered by the Brewer to the Retailer till the Excise be payed. But for Beer or Ale sold in Fairs by By-Brewers no Penalty is incurred if the Excise be paid before Sale [b]. Importers of French Brandy before the Duty is payed or agreed for, and their Assistants, and the Concealers thereof after landing, forfeit the same and the double value, half to the Queen and half to the Informer [c].

3. Several persons within the Northern Shires of Ross, Sutherland, Caithness, Argyll, Inverness and Burghs thereof, being in arrear and deficient in payment of a considerable part of the Kings Annuity of Excise, notwithstanding all Diligence used for inbringing thereof, It was declared by the Act 20. Sess. 1. Par. 2. Ch. 2. that if three Quarters payment of the Excise Annuity should run in the fourth unpaid, then the Shire, Burgh or Person deficient was to be lyable in the double of the whole Years Annuity *toties quoties*. Without prejudice to the Obligation for single payment by the Commissioners of Excise in these Shires. But S. G. Mackenzie observes that, that Act was

(a) 12. Car. 2. Cap. 23. & 24. 15. Car. 2. Cap. 23. & 24. [c] 1. A. Sess. 1. Cap

b) 12. Car.

never put in Execution. Because, it seemed unjust to put some Shires in a different condition from the rest, in a common concern: the legal way being to use stricter Execution against them. And whatever might be done at the first laying on of an Imposition, it were hard to take such a severe course after it is laid on: For probably these Shires would not have consented, had they foreseen any singularity of dealing with them in the uplifting. Nor did they consent to the Excise but upon equal Terms with other Shires. Again, The Taxation was a voluntary offer, and therefore should not be otherways exacted than in the Terms of the Offer. And otherwise any Shire for the future would be discouraged from offering or consenting to any Taxation; seeing they could not be sure but a prevailing Party, or the passion of some leading Men might get it doubled upon them.

4. Because sometimes upon imposing new additional Excise Duties, Brewers are apt to forbear to brew for a time, and some would begin to brew for their own use, who were not in use formerly so to do: For obviating these practices it hath been provided by several Acts of our Scots Parliament [4], That if after the imposing of the Additional Excise Duties therein mentioned, any Brewer in use to brew for Sale and Change should give over brewing without an allowance from the Commissioners of Excise, should not be permitted to brew for change for the space of five Years thereafter. And that Persons beginning to brew for their own use who were not accustomed to do so

(a) Act 3. Sess. 4. Parl. W. & M. Act 28. Sess. 5. Act 2. Sess. 6. Parl. K. W.

before should be liable to pay Excise for what they Brew.

5. The Person who shall prove a Tender of his Entry, or payment of the Duties by the Oath of one or more sufficient Witnesses, is free from any Penalties for Non entry or not payment for that time. And no Brewer shall be prosecuted for mis-entry or short-entry, if within a Week after he doth rectifie his Entry by the Gaugers Return, or otherwise discharge himself (a). Altho' commonly *pœna delictorum non tolluntur pœnitentia* (b).

(a) 15. Car. 2. Cap. 11. (b) Bruneman. Comment. in Pandect. Lib. 47. Tit. 2. l. 65

S E C T. V.

Of Action and Diligence competent about Excise Matters.

1. **M**atters of Excise in London, and within the Bills of Mortality, are judged by the Commissioners of Excise : from whom there lyes an Appeal to the Commissioners of Appeal. But these Appeals are not admitted unless brought within two Months after the first Judgment : And the single Duty be deposited, and security given to answer the Penalty decerned against the Appellant. If the Original Judgment be reversed on the Appeal, the single Duty shall be restored, and the Prosecuter pay double cost. If affirmed, the Appellant shall pay double cost (a). But in all places of England, without

adjudge

(a) 15. Car. 2. Cap. 11.

the

62 *The Duty and Powers of*
the Bills of Mortality, and consequently here in
Scotland, any two or more Justices of Peace are
the proper Judges in Excise Matters: And I
don't find that there lyes any Appeal from them,
but their Sentence seems to be final (a). But in
other Matters three Justices of Peace are a *Quorum*
with us to judge in the Intervals betwixt Ses-
sions (b).

2. The Justices of Peace for the more easie dis-
patch of Justice to the Ledges, do cast the Pa-
rishes of their respective Shires into several Dis-
tricts. And such a cast of the Parishes of the
Shire of *Edinburgh* was appoven at the general
Meeting of the Justices of that Shire the 30 of
September 1707. According to which cast some
Justices are named in several Districts;
in consideration of the different Interests
they have in several places. And any Justice
within the Shire may sit and Judge in any such
Court there, tho without his proper District. And
the Justices in the Country Courts are lyable to sit
and judge in Matters of Excise at *Edinburgh* when
called; in respect the greatest Business about the
Excise will be there.

3. Action for payment of the Excise duty; and
for the Penalties of Contravening the Rules of
Excise, is competent to the Excise Officers against
the not paying or Delinquent Brewers, Distil-
lers, &c. And Brewing or Distilling Vessels and
Utenfils are liable for the Excise of what was
brewed therein, and for the Penalties incurred
by the Brewer or Distiller, tho belonging to ano-
ther in Property (c). But Informations against Brew-

(a) 12. Car. 2. Cap. 23. & 24. (b) *Vid. sup. Ch. 1. N. 2. P. 9.*
(c) 15. Car. 2. Cap. 11. 7. & 8. W. 3. Cap. 3.

ers or Ale-house-keepers, are not to be prosecuted unless they be entered within three Months after the Offence committed, and notice thereof be given to the Persons informed against in Writ, or left at their Dwelling-houses within a Week after exhibiting of the Information; that they may have a competent time to defend themselves (a).

4. Action for Damage and Interest is competent to Brewers, Distillers or others, against Gaugers or other Officers of Excise, at whose instance the Pursuers Ground, Partition-wall, House or other place was broken up, in order to find some privat concealed Backs, Tuns, Pipes, or other Conveyances, which upon search were not found. But what is decerned in name of Damages upon such an account, is payable out of the Revenue of the Excise (b): seing the Excise Officer was but discharging his Duty, & *Officium nemini debet esse Damnosum*.

adjudged

5. Actions brought against Justices of Peace or others imployed by them in the Execution of 11 and 12 W. 3. cap. 15. for ascertaining the Measures of Beer and Ale are to be laid in the proper County, where the fact was committed and no where else. And if the Defender in any such action prevail and be assoiized, or the Pursuer discontinue his Action, the former shall have triple Expensies of Plea. For understanding whereof, by the said Statute, all Retailers of Ale and Beer were ordained to sell the same by a full Quart or Ale Pint, according to the standart in Exchequer, on pain to forfeit a Sum not exceeding 40, nor

freed from the Suit

(a) 1. W. & M. Cap. 24. 12. & 13. W. 3. Cap. 11. (b) 7. & 8. W. 3. Cap. 3. 8. & 9. W. 3. Cap. 19. 10. & 11. W. 3. Cap. 4.

under

under ten shillings for every Act of Contravention. And the Mayor or Chief Officer of every City or Town, shall cause all Ale Quarts and Pints made of Wood, Earth, Glass, Horn, Peuther or other wholesome Metal, that shall be brought to them to be measured and sized with the standart in their Custody, taken from the Original in Exchequer, and to be marked with *A. R.* and a Crown; And shall take but one Farthing for the stamping each Measure. And if any Retailer sell Ale or Beer in a Vessel not marked; or if he refuse to give an account of the number of Quarts or Pints of Ale he demands in his Reckoning; It shall not be lawful for him upon not payment to detain the Debtors Goods, but he shall be left to an Action at Law for the same. And the Mayor or other Chief Officer in any Town neglecting their Duty herein, shall Forfeit five pound, and be lyable to the Parties lesed in triple Damages, beside Expenses of Plea. Which Penalties and Forfeitures are to be divided betwixt the Prosecuter and the poor of the Parish where the Offence is committed; and to be recovered before one or more Justices of the Peace *in loco delicti*; and to be levied by their Order out of the Delinquents Moveables; He always being prosecuted within thirty days after committing of the Offence.

6. The Justices of Peace may, upon Complaint or Information exhibited before them, for Offences against the Laws of Excise, summon the Party accused; and upon his appearance or contempt, may proceed to examine the Matter of Fact, and

sustain

sustain the same probable by Oath of Party (a) or *pro ut de jure*. And if the Plaintiff chuse to prove his point by Witnesses, the Justices may cause cite Witnesses to clear the truth of the matter; who, in case of their not compearing or refusal, upon compearance, to give Evidence when required, shall Forfeit Ten pound (b). For *qui testimonium dicere recusant panalibus mandatis compelli possunt*. And in all Crimes he who refuses to depone against a Delinquent, is no less guilty, than he who rescues him out of the hands of Justice: The contempt of Authority being equally great in both, and the prejudice arising to the Common-wealth the same (c). The Justices of Peace are allowed to give sentence in some cases, upon proof by one Witness; as in the case of 12 Car. 2. cap. 23. & 24. And a Tender of Entry or payment at the Excise-Office is probable by one Witness to free from the penalty of Non-entry or not payment (d). Again, the Forfeitures for not Retailing Beer and Ale by the full Quart, and pint in Vessels marked by the chief Magistrat in Town or City, as measured conform to the Standart in their Custody, taken from the Original in Exchequer, and the Forfeitures of the said chief Magistrats for not marking and measuring all such Beer and Ale Vessels, as are brought before them for that Effect, are recoverable upon the Oath of one or more Credible Witnesses (e). For tho two Witnesses, at least,

[a] 12 Car. 2. cap. 23 and 24. and by the Act 8 Par. 22. f. 6. *Act* 38. Par. 1. Ch. 2. a person may be holden as confess upon two Citations at his Dwelling-house, to compare before the Justices of Peace, *vid. Sup. chap. 1. N. 2. P. 4.* (b) 7. & 8. W. 3. Cap. 3. (c) *Maskenzie Observ.* on the *Act* 2. Sess. 2. Parl. 2. Ch. 2. (d) 18. Car. 2. Cap. 11. (e) 11. & 12. W. 3. Cap. 15.

are ordinarily required to make a Legal Proof; And *unus Testis non auditur et si Præclaræ Curie Honore præfulgeat* (a); Yet as, by the Civil Law, more than two Witnesses were necessary in some Cases of Testaments, Codicils, &c. So, by the Law of England, one Witness makes Faith in some Cases; As where the Tryal is by a Jury; And where the Justices, as here, are Authoriz'd by particular Statute, to Judge upon the Testimony of one. Tho Peers, when Defendants, are only obliged to Answer upon their Honour, they may be sworn as Witnesses in *Juramentum Probationis* (b).

7. It hath been observed, That the *Turkish* Country Magistrates, who are much like our Justices of Peace, determine Cases mostly without Oaths. And endeavour to pick out the Truth by *Queries*, observing Mens Countenance and Behaviour in their Answers, and by comparing Things together, and making the several Parties tell the Matter of Fact, or so much on't as they know, successively after their own way.

8. The Justices of Peace may, upon Proof adduced before them, issue Warrant to Levy Forfeitures on the Goods of Offenders, and to Sell them, if not Redeemed within Fourteen Days: And for want of Poindable Goods, to Imprison the Offending Party, till Satisfaction be made (c).

9. The Excise Officers cannot exact any Fines or Forfeitures for Contravention of the Laws of Excise, till it be found by Decreet of the Justices of Peace, that the same are incurred. And the Justices may mitigate such Fines and Forfeitures, according to their Discretion: So be, in

(a) 1. 9. §. 1. C. de Testibus. (b) Jones Reports, P. 152, 154, 155. The Earl of Lincoln's Case. (c) 12. Car. 2. Cap. 23. & 24. their

Goods that
may be
seized.

their Mitigation, they go not below the double Value of the Duty that should have been pay'd, besides the reasonable Charges of the Officers, or others therein employed (*a*).

10. But these Penal Actions in Matters of Excise prescribe in a short time, according as they are more or less favourable. So, Actions against Persons lending their fix'd Brewing Vessels (*b*), And Actions against the Users of Molossus, Coarse Sugar, Honey, &c. in Brewing or Working Beer or Ale (*c*), must be commenced within six Months after the Offence. Informations against Brewers or Ale-house-keepers can only be prosecuted within three Months (*d*), And the Contraveeners of the 11. and 12. W. 3. Cap. 15. for Ascertaining the Measure of Beer and Ale, must be pursued within thirty days, after committing the Offence,

(*a*) *Ibid.* (*b*) 22. & 23. Car. 2. Cap. 5. (*c*) 1. W. & M. Cap. 24. (*d*) 1. W. & M. Cap. 24. 12. & 13. W. 3. Cap. 11.

THE CONCLUSION.

THUS I have made a shift to go throw stitch with the Law part of the Duty and Powers of our Justices of Peace. As for the Moral or Religious part, it is Pulpit-work, and the proper Business of Divines. I shall therefore conclude only with a short Christian *Monitory*.

The Station of a Justice of Peace requires a stock of Prudence, and a competency of Law and

humane Learning to bear out the Character. A Justice of the Peace is his Brothers Keeper; and therefore should not sit an unconcerned Spectator of the Misfortune and Grievances of other Folks Condition, but should charitably interpose for their Relief. He should be Religious, Upright, Virtuous and orderly in his Life and Conversation: That there be no occasion to reproach him with those Crimes or Vices which he has Commission to hunt down in the Countrey. He ought not to abuse to evil purposes the power put in his hand for advancing GOD's Glory and the Good of Men: but to do good should be his highest Ambition. And in the dispensing of Justice he should neither be too faint, nor too peremptory; and should equally avoid precipitate Haste, and unnecessary Delays. He must not stand in awe to do his Duty, nor be afraid of the face of man, for the Judgment is Gods. He should not respect persons in Judgment, but should hear the small as well as the great (a). Nor is he out of affected Pity and Compassion to countenance a poor Man in his Cause (b), any further than he hath Right and Reason on his side. In a Word, He is to act impartially, with clean Hands and honest Intentions, as in the sight of an Omniscient GOD, whose Eyes behold, and whose Eye-lids try the children of Men, and before whose Tribunal he must give an account of the Deeds in the Body.

If our Justices of Peace behave thus, GOD will deal well with them, and make them Houses (c): And their End shall be Peace (d).

(a) *Dent.* 1. 17. (b) *Exod.* 23. 3. (c) *Exod.* 1. 20, 21. (d) *Psal.* 37. 37.

A P P E N D I X.

CONCERNING

WEIGHTS and MEASURES.

1. **H**AVING spoke but Overly (*sup. pag. 9. 63. and 64.*) concerning Weights and Measures : I thought fit to add some thing upon the subject by way of Appendix.

2. Mens Necessity was the Original and most Antient Measure of Things. But when they came to affect the having of Superfluities, various kinds of Weights and Measures were introduced in several Nations ; whereof *Cain* is said to have been the Inventer, from a principle of sordid Avarice and Covetousness. Weight and Measure may be defined in the General, *a certain known Quantity, which being applyed to things, shews how oft it is contained in them, or how much of it they contain.* Which in Trade goeth under several Names, according to the different Qualities of Goods, and different National Customs.

3. The Science of Weights is a *Species of Mechanicks* called *Staticks*.

4. Measures are either applicative, *i. e.* Measures of length, whereof some Grains of Corn, or some parts of a humane Body is the Foundation : or they are receptive, *i. e.* Measures of Capacity, that are reckoned to have an Egg-shell for their Foundation ; & are divided into liquid & dry Measures.

5. The selling or retailing Goods by uncertain Weights and Measures, being found of evil con-

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5. The selling or retailing Goods by uncertain Weights and Measures, being found of evil consequence

sequence to the Publick & to privat persons, standing Weights and Measures authorized by publick Authority, have been set up in all Nations, conform to which the rest should be fram'd and adjusted, and by which, as a Touchstone, false Weights and Measures might be discovered. The publick Standarts of Weight and Measure in *Rome* were kept in the *Capitol* : And the *English* Standarts are kept in the Exchequer at *Westminster*. Our general standing Weights and Measures were the Eln, FirLOT, Stone-weight, and Jugg ; whereof the first was kept in *Edinburgh*, the second in *Linlithgow*, the third in *Lanerk*, and the fourth in *Stirling* : Which four Burghs (before the Institution of the Convention of Burrows) did manage the Burrow-Affairs. But now by the Union these old standing Weights and Measures are to be suppress'd, and in place thereof *English* standarts conform to those in the Exchequer at *Westminster*, are to be the Universal fixed Rules of Weight and Measure in *Scotland* ; and are now come down to be set up in, and kept by the fore-said Burghs to whom the keeping of our old standarts did belong. And it is incumbent upon the Justices of Peace, to see to the due and universal Observance thereof.

6. But yet the Measure and Weight of Things in Contracts, is sometimes determined by the nature thereof, and sometimes by the place of Delivery, sometimes again by the Quality of the Goods. So in the case of an Obligement to deliver Goods according to a certain Measure, whereof the Denomination is common, and the Quantity different in several Places, the Measure observed

APPENDIX.

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served in the place of Delivery is to be the Rule (a). Unless the Quantity be determined expressly, or tacitly, either by the naming of some other place; or by the Quality of the Goods, as so many Tunsof *Orleans* Wine promised must be delivered according to the Measure of *Orleans*, whatever be the place of delivery; Or by the nature of the Contract, when a certain Quantity is given in Loan, to be restored in another Place, which obligeth to Restitution according to the individual quantity received (b).

7. The main design of this Appendix was to give an account of the *Scots* and *English* Weights and Measures, compared and proportioned together: But after it is thus far advanced at the Press an emergent Difficulty obligeth me to break off here abruptly, and to lay aside the thoughts of adjusting these Measures till some other occasion.

(a) l. 71. ff. de Contrah. Empt. l. 3. ff. de Reb. Aut. Jud. Possid. l. 21. ff. de Oblig. & Act. l. un. Cod. ubi Conven. qui certo loco. (b) Burgundus ad Consuetud. Flandriae, Tract. 4. N. 28, 29. Voet. Comment. in Pandect. Lib. 46. Tit. 3. N. 8.

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Rob. Forbes Cls. Sti. Concilij.

THE
DUTY and POWERS
OF
JUSTICES of PEACE,
In this Part of
GREAT-BRITAIN,
Called
SCOTLAND.

Part II.

Together with
The Relative Duty and Powers of Con-
stables, Sheriffs, Stewarts, Lords of
Regality, Baillies of Regality and
Royalty ; and an Explanation of the
Conformity and Differences betwixt
the *Scots* Law, and that of *England*,
in so far as concerns the Subjects
Treated of.

By WILLIAM FORBES Advocat.

EDINBURGH,

Printed by the Heirs and Successors of *Andrew
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TO THE HONORABLE

SENATE OF THE UNITED STATES

OF COMMERCE

IN SENATE

EXECUTIVE DEPARTMENT

WASHINGTON

1881

RECEIVED

DECEMBER 15 1881

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OFFICE OF THE SECRETARY

THE PREFACE.

HAVING Formerly Discours'd of the Original, Nature and Progress of the Justice-ship of Peace among us down to this Day; And the Parliament of *Great Britain*; having lately Extended the Powers thereof with a Quality, That our Justices of Peace should proceed in Trials, and Judge conform to the Laws and Customs of *Scotland*: I was Induced to Lengthen out my Book, by adding a Second Part to it. Wherein my Business is, to shew what Justices of Peace, and their Constables may, and should do by the Laws of *England*, without taking notice of private Statutes that give some Power to them, in relation to particular Counties or Cities; And to clear up the Relative Duties and Powers of Sheriffs, Stewarts, and Judges of Regality, and Royalty: Running the Parallel all along, and Explaining the Differences betwixt the *Scots* and *English* Laws, in so far as concerns the Subject in hand; and Observing the following Heraldry and Method.

The *Treatise* is thrown into Six Chapters.

[a]

The

The Preface.

The *First*, Concerning Justices of Peace in General, Explains the several Kinds of them, let's see who are Legally Incapable to Exerce such an Office; Describes their Ministerial and Judicative Capacity; The Limits and Great Lines of their Authority; distinguisheth what is proper to be done in Sessions, from *Extra-Sessional* Business; presents a Scheme of the Constitution, and the Constituent Members of the Sessions; and points out the Difference betwixt the Method of Trying Offences before our Justices of Peace, and that Observed in *South-Britain*.

In the Two subsequent Chapters, I Treat of particular Justice of Peace-Powers and Duties: Beginning with *Extra-Sessional*, and Special-Session Affairs, which take up the Second Chapter; and proceeding in the Third, to speak of Business that is appropriated to the General Sessions. Both which Chapters are Divided into Four Sections, bearing the same Titles in both. The first *Section* contains the Legal Security private Men have by the Subordinated Government of Justices of Peace, from Disturbance and injurious Attacks upon their Bodies, Reputation, Goods and Fortunes. The Second comprehends what Justices of Peace are Authorized and Injoyned to do for Suppressing Immorality and Prophaneness.

The

The Preface.

The Third *Section* runs upon their Works of Charity and Piety. The Fourth upon what concerns the publick Policy, Security and Government, *viz.* What Justices of Peace are to do for Purging the Country of Rogues and poor Idle Vagrants; for preserving the Game, and Discouraging Unlawful Gaming; For Incouraging and Improving In-land Product and Manufactures; For Mending and Upholding Highways and Bridges; For Regulating Carriages, and maintaining Correspondence betwixt distant Places; For causing Masters and their Servants, or Apprentices do just Things to one another, and Trades-men work, and make sufficient Work at reasonable Prices; For Securing the Government against the Plots and Machinations of Disaffected Persons; For Recruiting the Forces, accomodating the Souldiery with Necessaries and Conveniencies, and keeping them from Debording; For Incouraging Inclosing, Planting, and Policy; About Prisons and Prisoners; in Relation to Trade, Buying and Selling; and about Weights and Measures, &c.

It was once in my View, to give an Account of the *Scots* and *English* Weights and Measures, compared and proportioned together, (*); but now that the former are to be

(*) *Vid.* Appendix to the first Part.

The Preface.

Suppress and Sunk, and the latter set up and used in their Place ; It seem'd hardly worth the while, to keep up the Difference by a Comparison and Scheme of both : And therefore, upon second Thoughts, I held it Sufficient to Explain the *English* (now to be the *British*) Weights and Measures ; and to clear the Difference betwixt the Punishment of using False Weight or Measure here, from what it is in *England*.

The fourth Chapter handles Appeals from private Justices of Peace, to the General Sessions ; and the Legal Checks to which the Sessions Proceedings are Obnoxious.

The fifth Chapter turns upon Constables, and other Inferiour Officers of the Peace. Whom the first *Section* Treats of in general ; and the Second shews what is Expected from them on particular Occasions.

In the last Chapter (which runs into two *Sections*) the co-incident Duties and Powers of Sheriffs, Stewarts, Lords and Baillies of Regality, and Royalty are Sum'd up and Discuss'd. The first *Section* Treats of Sheriffs in all their Capacities, and of Stewarts and Stewartries. And the Second gives a tolerable Account of Regalities, with their Powers and Privileges : Where the much Disputed Point concerning the

The Preface.

the Sovereigns Power of Erecting Regalities within Hereditary Sheriff-ships, is handled by Stating the Reasons *pro* and *con* Succinctly and Impartially.

In fine, To make things more clear, and this Performance the more agreeable and useful, the Courts of Justice in *England*, and their Law-Terms are Explained *en passant*, as there is Occasion to use and mention them.

The Matter contained in this Second Part, might have been Improven to a Larger Volume; But I Confined my self to handle it so, as only to give Account of Things I thought fit and necessary for our Judges and Officers of the Peace to Know; Which are Digested in the Clearest and Shortest Method I could bring 'em into. Nor did I find it necessary to Swell this Second Part with the Precedents used in *South-Britain*, in Relation to the Office of a Justice of Peace; as not being adapted to our Form of Process.

'Tis no doubt Expected, that such a Novice in the *English* Law should at his first Setting out, make Apologie for any Inequalities, Errors and Defects in the Performance. And I have sufficient Reason to do so: But chuse rather, in stead of all Excuse, to submit my Failings and Mistakes intirely,
to

The Preface.

to the Generous Mercy and Discretion of those whose Hands my Book shall fall into; Declaring at the same time, that I shall ever think my self Obligated to any who find Leisure to tell me freely what's Amiss, and Kindly point the Way to Mend it.

The Reader is Desired to Advert, that when speaking of the *Scots* Law, any Sum of Money is mention'd, *Scots* Money is understood; And when any Sum is spoke of with Relation to the *English* Law, *Sterling* Money is understood. And where it is said that a Forfeiture goes to the use of the Poor in general, I mean the Poor of the Place where the Offence is Committed.

I have only this further to add, That tho *Page* 6, and 12, I have Insinuated the Difference betwixt a *Quorum* of Justices of Peace here, and in *England*; and *Page* 16, Distinguished the Form of the Oath *de fideli* to be taken by Justices of Peace conform to our *Acts of Parliament*, from that which is put to them in *England*: A New Commission of the Peace is since come Down, which sets our Justices upon the same Foot in the Matter of a *Quorum* at the Sessions, with those in *South Britain*; And the *English* Formula of the Oath *de fideli* is appointed to be Administred to all Justices of Peace in *Scotland*. Therefore I thought fit to Subjoyn the same to this *Preface*:
Especially

The Preface.

Especially Considering, That our Justices of Peace before they Act must now Swear such an Oath, besides the other publick Oaths; and will find the whole of their Duty Couched in it.

The Form of the Oath of a Justice of Peace.

YE shall Swear, that as Justice of Peace in the Shire of Edinburgh, in all Articles in the Queens Commission to you directed, You shall do equal Right to the Poor, and to the Rich after your Cunning, Wit, and Power, and after the Laws and Customs of the Realm, and Statutes thereof made: And ye shall not be of Counsel of any Quarrell hanging before you: And that ye hold your Sessions after the Form of Statutes thereof made: and the Issues, Fines, and Amerciaments that shall happen to be made, and all Forfeitures which shall fall before you, ye shall cause to be entered without Concealment or Imbeziling, and truly send them to the Queens Exchequer. Ye shall not let for Gift or other Cause, but well and truly you shall do your Office of Justice of the Peace in that behalf: and that you take nothing for your Office of Justice of the Peace to be done,
but

The Preface.

*but of the Queen, and Fees accustomed, and
Costs limited by Statute: And ye shall not
Direct, nor cause to be Directed, any Warrant
by you to be made, to the Parties, But ye shall
Direct them to the Bailiffs of the said Shire,
or other the Queens Officers, or Ministers, or
other indifferent Persons, to do Execution
thereof: So Help You GOD.*

(1)
THE
DUTY and POWERS
OF
Justices of Peace,
IN
SCOTLAND, &c.

PART II.

CHAP. I.

Concerning Justices of Peace in General. Where of the several kinds of them; who are capable to exercise such an Office; their Ministerial and Judicative Capacity; Extent of their Authority; the Nature, Difference and Constitution of the Sessions of the Peace; the distinction betwixt Session-busines, and what may be done out of Sessions; Raising the power of the County; Bailing Prisoners; wherein the Oath de fideli of an English Justice of Peace, differs from our Formula; Extension of the Power of our Justices of Peace by the late Act of Parliament; The different methods of Trying Offences before Justices of Peace here, and in England.

Justices of Peace are either Heretable or Temporary. Some of the former are established by Act of Parliament; as the Bishop of Ely and his Steward, the Arch-Bishop of York, Bishop of Durham, and their Chancellors. Others ow their Authority to Letters
A Patents

2 *The Duty and Powers of*
Patents under the Great-Seal. Several Royal
Burghs in Scotland, as *Edinburgh* and *Aberdeen*
are by their Charters Ratified in Parliament,
constituted Heretable Justices of Peace within
their Bounds.

2. Temporary Justices of Peace are so many
Lawful (a) Men, as the Sovereign thinks fit to
name from time to time, by Commission under
the Great Seal (b) for keeping the Peace in the
District (c) where they live. Which Commis-
sions expire and are revokable the same way as
ordinary Mandats. Some of these Temporary
Justices are called Justices of the *Quorum* (d)
without whose concurrence several Affairs of im-
portance cannot be done; as will appear in the
course of this Treatise. These Justices of the
Quorum are commanded to reside within their
Respective Counties; except Lords, Judges,
Serjeants at Law (e), and the Queens Attor-
ney (f).

3. Some Persons by the nature of their Office are
incapable to exerce any part of the Function of a

(a) *Legalis homo*. is a Man not attainted or outlawed, who as
they phrase it in *England*. stands *Rechts in Curia*; or who, as we
say, has *personam standi in judicio*. (b) 27 H. 8. c. 24. 6 A. c. 6.
(c) District is the Place in which a Man hath the Power of distrain-
ing; or the circuit where one may be compelled to appear. (d)
Justices of the *Quorum* are described in the Preface to the first Part.
(e) Serjeants at Law, or *Servientes ad Legem*. are those arrived to
the highest degree in the study of the common Law, and are able to
that of *Doctor* in the Civil Law, out of whose number all the Judges
of the Queens Bench, common Pleas, and Exchequer in *England*
are chosen. They wear certain Robes and Coifs, whence they are
called Serjeants of Coif. None but Serjeants at Law are permitted
to plead in the Court of Common Pleas, where Civil Causes betwixt
Subjects are agitated, and the Common Law most strictly observed:
But they may also Plead in any other Court at *Westminster*. One of
these is called the Queens Serjeant, who Pleads for her Majesty in
all Causes, especially those of Treason. (f) 2 H. 5. c. 4.

Justices of Peace.

3

Justice of Peace, as Sheriffs (a). Others are debarred only from exercising some part of it ; as Commissioners or Farmers of the Excise, who cannot Act as Justices of Peace in matters of Excise (b).

4. The Authority of Justices of Peace in England is in some Cases Ministerial : as when by a *Supplicavit* (c), out of the Chancery (d), or Queens Bench (e), They are commanded to take surety for the Peace, or good Behaviour ; or by a Writ upon the Statute of *Northampton* (f) to remove Force. In other Cases they have a Judicative Capacity : But liable to the Check of a *Superse-deas* (g), out of the Chancery or Queens-Bench, which stops their Procedure in any matter concerning the Peace ; or a *Certiorari* (h) out of any higher Court at *Westminster*, ordering them to certify some *Recognizance* (i), Inditement

(a) 1 Mar. Sess. 2. c. 8. (b) 15 Car. 2. c. 11. (c) *Supplicavit* is a Writ which of old was called *Breve de minis*. (d) The Chancery is a Court of Equity and Conscience, moderating the rigour of other Courts that are strictly tied to the Letter of the Law : where the Lord Chancellor, or Lord Keeper of the Great Seal is the sole Judge. (e) The Queens Bench (so called because in former times the Sovereign used now and then to sit there in Person on a high Bench, and the Judges on a low Bench at his Feet) is the highest Court at Common Law in England ; where Pleas of the Crown, and Crimes inferring loss of Life or Limb are Judged. (f) 2 Edw. 3. c. 5. (g) *Superse-deas* is a Writ importing in General a Command to forbear the doing of something for Reasons therein mentioned. (h) *Certiorari* is a Writ issued out of a high Court, calling up thither the Records of a Cause depending before an inferior Court upon complaint of Injustice done there. And differs from a *Prohibition*, which is a Writ to forbid any Court to Proceed in a Cause there depending, upon Suggestion, that the Cognition thereof belongs not to the said Court. A *Certiorari* is the same with an *Ad- vocation upon inquiry* in Scotland : and a *Prohibition* in England answers to our *Ad vocation upon Incompetency*. (i) *Recognizance* is a Bond or Obligation taken by a Judge, which comes from the French *Reconnaissance* an acknowledgement.

4 *The Duty and Powers of*
(a) or other Record taken before them.

5. The Authority of our Justices of Peace is also partly Ministerial, as when, in pursuance of a Commission from the Lords of Session, they *Perambulate Commonities*, Take and Report Probation (b) &c. Partly 'tis Judicative so far as their Jurisdiction extends, Regulated by the Commission of the Peace, and particular Statutes: By some of which Statutes several things are expressly referred to their discretion (c). Yet they are not properly Judges of Property, but only of Possession; and their Sentences are mostly in effect *interdicta* (d). By the Treaty of Union (e), no Causes in Scotland are Cognoscible by any Court in Westminster-hall. Nor have any of these Courts Power to Review or alter the Acts or Sentences of our Judicatures, or to stop their Execution. But then the Judicative Power of our Justices of Peace, tho not accountable to the Chancery, Queens Bench, Common Pleas, or any other Court in

(a) An Inditement in *England* is a Bill or Declaration, by way of accusation at the Suit of the Queen, against one or more for some Criminal or Penal offence exhibited to Jurors, and by their verdict found and presented to be true before a Judge or Officer, having Power to Punish or Certifie the offence. It differs from a *Presentment*, in that the Latter is a meer Declaration of the Jurors or some other Officer as Justice, Constable, Searcher, Surveyor, &c. *ex proprio motu*. without any Bill or Information offered to them; whereas the former is grounded on a third Persons accusation. And tho an Inditement must be Subscribed by the Preferrer, (i.e. the Accuser or Informer) he is not tied to prove it under a penalty, except there appear Conspiracy: and therein it differs from an ordinary accusation. With us a Criminal in Prison is proceeded against by way of inditement at the instance of the Queens Advocate, or a Procurator Fiscal of an inferior Court. Against one at liberty we Raise a Criminal Summons, at the Instance of any particular accuser. (b) *Act 38. Sess. 5. Par. W. & M.* (c) *vid. Part 1. pag. 5.* (d) *Interdicta* were extraordinary Actions among the Romans, wherein matters of Possession, or resembling Possession were Summarily cognosced. (e) *Art. 19. West.*

Justices of Peace.

5

Westminster-hall, is yet subordinated to the Supreme Courts of the Session and Justiciary in *Scotland*. In so far as the Lords of Session may Advocate Causes from our Justices of Peace, as from other Inferior Judges, upon the common Grounds of Incompetency, Partiality, Relation, Intricacy or Importance of the Case to be determined. And then, according to Circumstances may either remit the Cause to themselves again with Injunctions, or to the Lords of Justiciary, or other Judge competent. And for just Reasons, the Sentences of our Justices of Peace may be Re- *stande.* duced or Suspended by these Sovereign Judges: Except it be in the matter of Excise, where there seems to ly no Appeal from the Justices of Peace (a)

6. No Justice of Peace of any County, can exercise his Authority without the County. And where a Parish lies in different Counties, or partly within the Liberties of any City having their proper Justices, and partly without: then the Respective Justices are confined to Act only within that part their proper Bounds extends to (b). But as to the Power that Justices of Shires here, do claim in Cities within the same, whose Magistrates are Heretable Justices of Peace; That being presently under Debate betwixt the Justices of *Mid-lothian* and the Town of *Edinburgh*, and perhaps to be laid before the Parliament: I shall not presume to expose my private thoughts upon so tender a Point of Jurisdiction, so Anxiously disputed on both sides.

(a) *Vid. Part 1. Pag. 62.* (b) *Dalton Country Justice, Chap 6.*

6 The Duty and Powers of

7. The Work of Justices of Peace is either proper to be done at the Sessions, or by private Justices out of Sessions.

8. By the Law of England, the Sessions of the Peace is a Court held generally Four times in the Year, viz. in the first Week after the Feast of St. Michael (a), the first Week after Epiphany (b), the first Week after the close of Easter, and the first Week after the Translation of St. Thomas the Martyr (c); and ofner according to the Exigence of Affairs, by Two (d) or more Justices of Peace *Quorum Unus* for exercising the Authority given them by the Commission of Peace, and Acts of Parliament. I said this Court is generally held every Quarter of a Year; Because of some Exceptions, viz. The Justices in *Middlesex* are oblig'd to keep Sessions only twice a Year, except upon the extraordinary emergences of forcible Entry, and Riots, (e) &c.

*Quarter
Terms in
Scotland.*

9. By the Law of Scotland (f), the first *Tuesdays* of March, May, and August, and the last *Tuesday* of October are the Quarter Terms of Meeting of the Justices of Peace (g). And three Justices being a *Quorum* to Judge in Matters occuring betwixt the Quarter Sessions (h): It seems one of these Sessions cannot consist of fewer.

10. Whether Magistrates of Burghs who are Justices of Peace within themselves, have Power to hold General Sessions by themselves, I shall not at present Determine; because of the neces-

(a) The 29 September. (b) The 6 January. (c) The 7 July (d) Yet some few things by certain Acts of Parliament cannot be done in Sessions, but by more than Two. (e) 14 H 6. c. 4. (f) Act 28. Parl. 1. Sess. 1. Ch. 2. (g) Vide Part 1. Page 13. (h) Ibid. Page 9.

Justices of Peace.

7

ary Connection of that Point with their contraverted Privilege of excluding the Justices of the Shire from acting within their Bounds. But shall only Observe, that generally where Justices of Peace are said to have Power to do any thing, Mayors and other Head Officers are understood to have Power to do the same within their respective Cities or Towns, and Privileges where they are Justices of Peace; as well as Justices of Counties may do within their Counties (a).

11. The Quarter Sessions are sometimes termed Principal Sessions (b), sometimes Open Sessions (c), and sometimes General Sessions, to distinguish them from special or private Sessions, which in England use to be Summoned upon particular Occasions by Warrant of Two or more Justices *Quorum Unus* (d). But our Law Authorizeth the *Custos Rotulorum* to Appoint special Sessions (e); Who is therefore called *Convener* of the Justices of Peace.

12. By the Law of England, The Sessions for Labourers or Servants ought to be kept twice a Year between *Michaelmas* and *Christmas*; and between Lady Day (f) and the Nativity of St. John the Baptist (g). But other special Sessions may be holden at any time *pro re nata*. Yet the Justices ought to hold a Sessions within a Month after Commission of a Riot under pain of 100 Pound to every Justice next adjoining failing so to do (h). And upon a Complaint of a forcible

(a) *W. S.* New Survey of the Justice of Peace his Office, Chap. 1. §. 7. (b) 4. H. 7. c. 12. (c) 27 Elix. c. 19. (d) *Lambard Eirenarcha*. lib. 4. c. 2. (e) *Vide* Part 1. Pag. 10. (f) 25 March. (g) 24 June, 5 Elix. c. 4. § 37. (h) 13 H. 4. c. 7. § 11 & 4.

Entry a Sessions should be held within a reasonable time (a).

13. By our Law the Wages of Labourers, Workmen and Servants are to be appointed at the Quarter Sessions kept in *August* and *February* (b), and two Courts ought to be held Yearly at *Pasch* and *Martimaſs* for punishing Contraveeners of Acts of Parliament concerning the Slaughter of Black Fish, *Smolts*, and cutting of Green Wood (c).

14. What is done in special Sessions, ought to be Returned to the Quarter Sessions (d). Justices at Special Sessions are not stinted to the Quantity of Business, as at the Quarter Sessions, but may do more or less as they think fit. Yet they have there the same Power, except in some particular cases, that they have in the Quarter Sessions (e).

15. By the *English* Law, every Justice not being Duke, Earl, Baron or Baronet, may get 4 Shillings for every Day he attends the Sessions from the Sheriff or his Deputies out of the Fines of the Sessions; and Absents from the Sessions are punishable by the Privy Council, except Lords, Justices of the one Bench and the other, The Chief Baron of the Exchequer, Sergeants at Law and the Queens Attorney, whose not Appearing is dispens'd with (f).

16. By our Law (g) Justices under the Degree of a Lord of Session are allowed 40 Shillings *per Diem* for their Attendance at the Sessions, not exceeding three Days at once, to be paid by their

(a) 3 H. 6. c. 9. (b) *Vid.* Part 1. Page 7. (c) *Act* 30. Par. 1. 7. 6. (d) *Styl.* 360. (e) *Shepherd* whole Office of the County Justice of Peace, Part 2. Chap. 5. Sect. 1. (f) 12 R. 2 c. 10. 14 R. 2. c. 11: & 2 H. 5. c. 4. (g) *Vide* Part 1. Pag. 10.

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Collector: And for Absence without a lawful Excuse, are liable to a Fine of 40 Pound.

17. As all Justices of Peace ought to keep the Sessions: Particularly the *Custos Rotulorum*, or his Deputy, the Clerk of the Peace, must appear there with the Rolls of the Sessions (a).

18. By the *English Law* (b) the Clerk of the Peace for each Day he keeps the Sessions, gets Two Shillings out of the Fines of the Sessions, from the Sheriff or his Deputy, who should also be present [c]. But our Law ordains only in general, Clerks of the Peace to be paid out of the Fines, and these falling short, to get Payment out of the Exchequer [d]. The Clerk of the Peace in *England*, is bound to deliver to the Sheriff Yearly, within 20 Days after the 29 September, a true *Estreat* [e], or Schedule of all Fines and Forfeitures Imposed or Forfeited in the Sessions of the Peace, held before *Michaelmas*; and should Yearly on or before the second Monday of all Souls [f] deliver up to the Exchequer a just Duplicate thereof to be a ground of Charge against the Sheriff, under the pain of 50 Pound, half to the Queen, half to the Pursuer [g]. The Clerk is also oblig'd to furnish each Justice *Gratis* with Copies of the Rates set down at *Easter* Sessions, for maintaining or conveying Vagrants; That they may accordingly Regulate the Allowances they shall have occasion to give to Constables for that effect [h]. In *England* the *Custos Rotulorum*

(a) *Lambard*, lib. 4: c. 3. (b) 12 R. 2 c. 10. [c] *Lambard*, *Ibid.* [d] *Vide* Part 1. Page 12. [e] *I. E.* an Extract Copy or Duplicate of an Original Writing. [f] The 2 November. [g] 22 & 23 Car. 2. c. 22, § 7 & 8. *junct.* 4 & 5 W. & M. c. 24. § 4 & 5. [h] 1 A. S: ff. 2. c. 13. § 6.

has

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 has the Naming of a Clerk to the General Sessions of the Peace during his Office; whom the General Sessions may Suspend or Deprive for Malversations, and may Substitute one in his Place, if the *Custos Rotulorum* neglect to supply the Office before their next Quarter Meeting [a]. But by our present Law [b], The Power of Naming the Clerk of the Peace belongs to the Secretaries of State, tho our Justices of Peace were once Impower'd to Chuse their own Clerk [c].

19. By the Law of England, Constables, Jaylors, and all Persons bound by Recognizance to Answer, to Prosecute, or to give Evidence, ought also to appear at the Sessions [d]. By our Law 'tis sufficient that one Constable from each Parish in Name of the rest attend the Sessions. *Vid. Part 1. Page 11.*

20. The Sheriff in England Returns Jurors [e] to the Sessions, to Examine Process. But there is no such Form with us.

21. By the Law of England, all Coroners or Crowners should be present at the Sessions. A Coroners Business is to take Inquisition in *Corona Populi*, if a Person, whose Body is found Dead, did die a violent Death. His Fee for every Inquisition taken upon View of a Body Killed or Murdered is 13 Shillings 4 Pence out of the Goods and Chattels [f] of the Murderer, or if

[a] 37 H. 8. c. 1. [b] *AR* 20. *Sess.* 2. *Par* 7. 7. [c] *AR* 16, *Sess.* 1. *Ibid* [d] *Lambard. Ibid.* [e] *i. e.* Those of a Sworn Jury. [f] Chattels is an English Law Term, signifying ones proper Goods. Under which they don't comprehend Ready Money, as having no intrinsic Value; nor yet Hawks or Hounds for that these are *Fera Natura*.

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II

he have no Goods, out of the Amerciaments [a] imposed on any Township for suffering the Criminal to escape [b]. But a Coroner gets nothing for inquiring about any accidental Death; and for taking Fees, or refusing to do his Office in such a case, is Fineable by the Justices of Peace in 40 Shillings [c]. If a Person Drown himself and cannot be found, Inquisition is to be before a Justice of Peace, and not a Coroner [d].

22. Here in *Scotland*, The Coroner was an Officer of the Justiciary. The Laird of *Ednam* was Heretable Coroner, whose Office is now obsolete, except at Justice Airts, where the Coroner presents all Malefactors, and takes them to and from Prison. There were also particular Coroners up and down this Country, whose Offices are much in disuse, except in the Isle of *Bute*, where Mr. *John Stuart* of *Ascog* had the Heretable Right of Coroner, and thereby claim'd a Lamb and a Firlof of Victual out of each of so many Few Lands there. But was liable by his Office to keep a sufficient Number of Men for apprehending Thieves and Robbers, and detaining them till presented to the Sheriff, and for putting Thiggers out of the Isle: But he hath lately Sold and Transferr'd his Office to the Earl of *Bute* who is Heretable Sheriff of that Isle.

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or to y King*

23. Justices of Peace may, as they think fit, hold their Sessions at any Place of the County, if not restrained by Statute [e]: As the Quarter

[a] Some distinguish Amerciaments from Fines, in that these are determined by some Statute, whereas those are imposed Arbitrarily. [b] 3 H. 7. c. 1. [c] 1 H. 8. c. 7. [d] Dalton, Chap. 144. [e] Lambard, Cap. 2.

Ses-

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Sessions of the County of *Anglesey* is appointed to be held for ever at the Town of *Beaumaris*, by an Unprinted Statute of 5 *Edward* 6.

24. Some Crimes the Justices of Peace are only to inquire of, and make discoveries to be laid before other Courts. In some Crimes they have Power of *Oyer and Terminer* [a], or to Hear and Determine. Again, many things can only be done by them in their Sessions, and some things are restricted to be done in particular Sessions. Of all which there will be occasion to speak in their proper places.

25. But as Affairs of higher Consequence require to be Heard and Determined *in figura Judicii* at the Sessions: matters of small Moment, some Preliminaries of greater, sudden Accidents whereby the Peace is broken, or which have a tendency to the Infraction or Disturbance thereof, are Cognoscible out of Sessions, by private Justices of Peace, supposed to be ready at Hand: Whereas before a Session could be Summoned, the case might be past Remedy.

26. In *England* Extrafessional Affairs may be Cognosced & Determined by one or more Justices of Peace, according to the Nature and Consequence thereof. But tho by our Law [b] one Justice may bind to the Peace, and may call and compel Persons to appear before him; yet three Justices are a *Quorum* to Judge in the Vacation

[a] *Oyer and Terminer* is an *English* Law Term borrowed from the *French Ouir & Terminer*. A Commission of *Oyer and Terminer* is a Power granted to some Eminent Persons for Hearing and Determining one or more Causes, and is the first and largest of the five Commissions, by which the Judges of Assize in *England* sit in their Circuits. [b] *Vide* Part 1. Page 3.

betwixt Sessions [a]. Which agrees with the Brocard in the Civil Law, *Tres faciunt Collegium* [b].

27. Any Justice of Peace may raise the *Posse Comitatus* or Power of the County [c] for Arresting and Imprisoning Traitors, Murderers, Robbers and other capital Offenders, such as break, or go about to disturb the Queens Peace, and for suppressing Riots. In which case it is referred to his Discretion what Number of Assistants he will have, and how Armed [d]. But a Justice cannot detain a suspected Person longer than he can conveniently Examine him, for which the *English Law* allows three days [e]. Nor can a Justice of Peace do Justice to himself [f]: Tho he may cause apprehend or commit such as attack or resist him in the Exercise of his Office, till they find Caution for the Peace; and an Inditement will ly against the Offenders.

28. As Law favours a Justice of Peace in the Exercise of his Office: So he is punishable for Irregularities; such as taking Bribes, compounding Recognizances, and not Returning them to the Sessions; misapplying Fines to his own use, &c. For Judges refusing to do the Law evenly, should be punished rigorously [g].

[a] *Ibid.* Page 9. [b] *L. 85. ff. de verb. signific.* [c] In England the Power of the County implies the Assistance of all Knights, Gentlemen, Yeomen, Labourers, Tradesmen, Servants, Apprentices and all others above the Age of 15, except Women, Ecclesiasticks, and Decrepit or Diseased Persons unable to Travel. But with us all betwixt 60 and 16 are reckoned the Power of the County. *Stat. K. Will. Cap. 23. Act 56, Par. 13. J. 2, AB 26, Sess. 3. Par. 1. Ch. 2.* [d] *Lambard lib. 3. c. 1. Dalton, Chap. 130.* [e] *Cro. Eliz. 829, 830.* [f] *43 Eliz. c. 7.* [g] *Act 45. Par. 2. J. 1.*

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29. By the Law of England, Justices of Peace may, for Malversing, or neglect of their Duty, be judg'd and called to Account sometimes by the Chancellor [a], sometimes by the Privy Council [b], in some cases by the Justices of Assize [c], and sometimes by their own Quarter Sessions [d].

30. Our Justices of Peace formerly were Censurable by the Privy Council of Scotland for any Miscarriage in their Office; and now, in Consequence of the Union, are Answerable for their good Behaviour to the Privy Council of Britain: as the Iniquity of their Sentences may be corrected by Advocation, Suspension or Reduction. Yea in some Cases the Justices of Peace are Fineable by the Lords of Session for refusing to do their Duty [e].

[a] 4 H. 7. c. 12. [b] 12 R. 2. c. 10. [c] 39 Edw. c. 20. For understanding the Nature of these Assizes, it may be observed, that all the Counties of England are divided into Six Circuits, and Two Learned Lawyers Assigned by the Queens Commission to every Circuit to Ride twice a Year, in Vacation time through the Shires within their Circuit, who are called Justices, or Judges of Assize; and sit by virtue of Five several Commissions, viz. 1. A Commission of Oyer and Terminer directed to them and others of the best Account in their Circuits, but in this Commission, the Judges of the Assize are *Sine quibus non*. And this Commission carries Power to Judge Treason, Murder and Felonies and Misdemeanors whatsoever. 2. A Commission of Gaol-Delivery, which is only to the Judges themselves and the Clerk of the Assize associate, whereby they are to deal with all Prisoners. 3. A Commission directed to themselves only to take Assizes, or do Right upon Writs called Assize, brought before them by such as are wrongfully thrust out of their Lands. 4. A Commission to take *Nisi Prius*, directed to the Judges and their Clerks, by which they are called Justices of *Nisi Prius*. 5. A Commission of the Peace in every County, which obligeth all Justices within the County without a Lawfull Excuse to be present, under pain of a Fine to be inflicted by the Judges. [d] 23 Edw. c. 2. § 10. [e] Ad. 13. Sess. 5. Par. W.

31. Justices

31. Justices of the Peace are Fineable for not taking sufficient Bail (a); or for refusing Bail when offered in cases Bailable; or for letting Persons not Bailable go upon their finding Bail. A *Felon* (b) Examined and Committed by two Justices, may be Bailed by one (c). But Justices of Peace can Bail no Prisoner, but such as is committed for Offences they are competent Judges of (d). The Statute 3 *Edm. I. c. 15* *junct. 1 & 2 Ph. & Mar. c. 13.* direct in what cases Bail should be taken by Justices of Peace in *England*, and what cases are not Bailable. As to the particular Instances of Persons Bailable, or not Bailable; there will be occasion to touch upon them in their proper Places.

32. By our Law (e) All Crimes not inferring Capital Punishment are Declared Bailable: and the Judges to modify the Sum for which the Bail is to be found, not exceeding 6000 *Marks* for a Nobleman, 3000 *Marks* for a Landed Gentleman, 1000 *Marks* for any other Gentleman and Burgess, and 300 *Marks* for any other inferior Person; and upon offer of sufficient Bail, is to set the Party at Liberty, under the pain of wrongous Imprisonment. But this is without prejudice to the Laws for Bail to be given by Chieftains and Land lords in the Highlands.

33. What ever may be done out of Sessions;

(a) Bail is he that obligeth himself to present a Person at a day Assigned, that otherwise would be committed to, or detained in Prison, and they who thus undertake for others are called *Mainprisers*, from *Main* and *Prendre*; Because they do receive them into their hands: whence Bailing is called a *Mainprise*. (b) One guilty of a Capital Crime. (c) *Koble* 188: §. 33. (d) *Dalton* ch. 66. (e) *AB* 6: *Jeff.* 9: *Barl. K. W.*

may be done in Sessions (a). And where more than two are necessary to do any thing out of Sessions, it can not be done by fewer in the Sessions. Yet what one can do out of Sessions can only be done by two *quorum unus* in the Sessions, as an Act of Court. Because the Court of Sessions, cannot be constitute by one (b). Where one Justice can do a thing, two or more may certainly do it (c). And Regularly it is the duty of the Justices to do what they have power to do: as they have power to do their Duty: And are Punishable for neglect thereof [d]. There lies in several Cases an Appeal to the Sessions, from what is done by Private Justices.

34. Justices of Peace in England are Sworn by their Oath *de fideli*, to take nothing for what they do in their Office, but of the Queen, and the accustomed Fees, and Costs limited by Statute, *i. e.* The Fee of each Days attendance at the Sessions [e], and five shilling for every day they sit not exceeding three, to execute the Statute of Labourers and Servants, § *Eliz. cap. 4.* And the Dues for Inrolement of Bargains or Sales of Land [f]. And 12 Pence to two Justices of Peace for taking Recognizance of a Person licens'd to keep an Ale House [g]. But our formula of a Justice of Peace's Oath *de Fideli*, contains no such Clause against taking [h]. There is also this in the *English* Oath, which is not in ours, That the Justices of Peace shall not direct any Warrant

(a) Shepherd *ibidem* ch: 1 sect: 1: (b) *Ibid* ch: 2. (c) *Ibid*: part 1: ch: 4: sect: 1. (d) *Ibid* sect: 3. (e) 12: R. 2. c: 10: (f) 27 H. 3: c: 16. (g) § *Edw. 6, cap. 25.* (h) *vid. part 1. pag 2.*

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to the Parties, but to Bailiffs [a] of the County, or other of the Queens Officers, or other indifferent Persons.

35. Commissions of the Peace here before the Union, were tied down to such Dimensions in the exercise of their Authority, as that they could not proceed against Delinquents, till after expiring of 15 days from the Commission of the Crimes [b]: Nor yet could Call or Compel any Person, whose Rent exceeded 10 Chalders of Victual, or 1000 Merks Scots, to Compear before them; but behov'd to apply to the Privy Council to get Delinquents of such a valuation fined [c].

36. But now our Justices of Peace are got rid of these Limitations, by a late Act [d] of the British Parliament, Authorizing them to do, use, and exercise over all Persons within their several Bounds, whatever pertains to the Office and Trust of a Justice of Peace, by virtue of Laws and Acts of Parliament made in England before the Union, in relation to the Publick Peace: over and above the Powers and Authorities they are vested with by the Laws of Scotland. And so have got in effect Transferred to them, a part of the Power formerly Lodged in the Privy Council, who judg'd all Riots Pursued before them, prosecuted how ever Recently committed.

(a) Bailiffs are Officers that serve Writs, and arrest People by virtue thereof. And these are of two sorts, *Bailiffs Errant*, and *Bailiffs of Franchises*. The first are such as the Sheriff makes and appoints to go any where in the County to serve Writs, to Summon the County Sessions, Assizes and the like. *Bailiffs of Franchises* are those appointed by every Lord of a Manour to do such Offices within his liberty, as the *Bailiff Errant* doth at large in the County. (b) *Ibid.* pag 12. (c) *Ibid.* pag. 3. (d) 6. A. c. 6.

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27. But

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37. But the English Justice of Peace-powers be communicated to our Justices: The methods of Tryal and Judgment in the Sessions of the Peace, must be according to the Laws and Customs of Scotland (a).

38. In England considerable Matters of Fact are tryed before the Justices of Peace by a Jury, who may find a thing proven by one Witness; and sometimes without Witnesses (b). Such Criminals as they find Guilty are usually committed to Prison by the Justices, to be tried at the next Assizes, when the Judges go their Circuits. At which Assizes all the Justices of Peace are bound to be present to attend the Judges: who may Fine them for Absence, without a Lawful excuse. But Justices of Peace are Authorized by Statute, to Hear and Determine many Causes of lesser moment upon their own view, the Offenders Confession or Proof by Witnesses (c) either expressly, or tacitly by referring the Trial to their discretion (d).

in Writing

39. Our Justices of Peace advise Probation without Juries; and may sustain Probation by Writ, or Oath of Party, or *prout de jure* (e); which last manner of Probation implies proof by Witnesses, in Points where Law sustains their Testimony; and Proof by Writ or Oath of Party, in such things as cannot be proven by Witnesses. But after a thing is once referred to a Parties Oath, there is no place for any further Proof by

(a) *Ibid.* (b) *Plow. 12. Shepherd Ibid. part 2. ch. 8. sect. 4.* (c) In which Case 2 Witnesses at least are necessary to be examined, except where Statute doth expressly sustain the testimony of one *Dalton ch. 115.* (d) *Ibid.* (e) *vid. part 1. pag. 4 & 6.*

Writ or Witnesses. And our Law gives no Faith to one Witness. But tho commonly no Person can be holden as confest, unless Personally apprehended: yet Justices of Peace may Punish and Fine a Delinquent as holden confest upon a second Citation at his Dwelling-house, tho not Personally Apprehended (a). And albeit by our Law, no Person ought to be Imprisoned in order to Tryal for any Crime or Offence, without a Warrant in Writ expressing the particular Cause, and proceeding upon a Subscribed Information; nor ought any Prisoner to be refused a Double of the Warrant, under the hand of the Executor or Keeper of the Prison; and the Subscriber or Executor of an Informal Warrant, or refuser of a double of any Warrant to the Prisoner, or the keeper of any in close Prison beyond 8 days, are liable to the pains of wrongous Imprisonment, which is 6000 Pounds for a Nobleman, 4000 Pounds for a Landed Gentleman, 2000 Pounds for any other Gentleman or Burges, and 400 Pounds for any other Person; and for each days wrongous detaining in Prison a Nobleman 100 Pounds, a Landed Gentleman 100 Merks, each other Getnleman or Burges 50 Merks, and any other Person 10 Merks, besides loss of Office, and incapacity of any publick Trust. Yet Commitments for, and the Prosecution of Thefts and Robberies in the Highlands or Borders, are reserv'd as formerly. And 'tis still intire to inferior Magistrates or Justices of Peace, to take Security for the Behaviour and

acknowledging the fact.

Illegal Warrant

(a) Ibid. pag. 4.

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Peace; or to Imprison in order to Tryal for Indignities done to themselves, or disobedience to Church-censures, or for Riots, or being found in Tumults, or for Drunkenness, Sabbath-breaking, Swearing, Uncleaness, Pickeries and Thieving, or to Imprison Vagabonds and Sturdy Beggars, as formerly, the Persons Imprisoned having always relief by offering Bail, and demanding a Trial (a).

levys-

40. In *England*, the Sheriff uplifts the Fines and Forfeitures imposed or incurred in the Sessions of the Peace, and the Clerk delivers to him an Extract of them, within 10 days after *Michaelmas* (b).

*levying -
Security*

41. Our Justices of Peace appoint a sufficient Collector for uplifting the Fines and Penalties they impose upon Offenders, and cause them to find Caution. At which Collectors instance, the Lords of Session used before the *Act 13. Sess. 2. Par. W. & M.* to direct General Letters on a 15 days Charge: and not to Suspend, but upon Consignation of the Fine, and Caution for Damages (c),

Security.

(a) *Act 6 Sess. 9. Par. K. W.* (b) 22 & 23. *Car. 2. c. 22. § 7. junct. 4 & 5. W. & M. c. 24.* (c) *vid: Part 1: pag. 10.*

CHAP. II.

The particular Duties and Powers of Justices of Peace out of Sessions, and in Special Sessions.

THESE particular Duties and Powers respect,
 1. The Security Private Persons have by their Government from disturbance in their Injoyments. 2. The bearing down Immorality and Prophaneness. 3. Their Works of Charity and Piety. 4. The publick Policy, Security and Government: Of all which I design to speak in order as they ly.

SECT. I.

The Security Private Persons have by Justices of Peace, from Disturbance and Injurious Attacks upon their Bodies, Reputation, Goods and Estate.

IT was early provided by Act of Parliament (a) here, That Peace should be kept every where, and no Subject move War against another. And in order to an universal Pacification, it was recommended to the Sovereign to Unite his Great Lords, and to cause them and the Justices reconcile inferior Persons (b). And such as obstinately refused to agree, were Punishable by Law (c). But now the Justices of Peace are

(a) AB 2: Par. 1. J. 1: (b) AB 92: Par. 13. J. 3. (c) AB 8 Par. 2 J. 4.

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the Authorized Peace-makers: who consult the
security of Peoples Injoyments, either by pre-
venting, or by quashing Breaches of the Peace,
and punishing Peace-breakers.

I.

What is done for preventing Breaches of the Peace.

For preventing Breaches of the Peace and Misbehaviour; The Justices may require such as are like to break the Peace, or do what hath a probable tendency to a Breach thereof, to give surety for keeping the Peace. And may bind to the good Behaviour, Bawds, Whores, Whoremongers, Night-walkers, Drunkards, Common-Gamesters, and in a word, those who are guilty of any Misbehaviour. (a).

2. A Justice of Peace may either of his own proper motion bind a Person to the Peace and good Behaviour, or at the request of another. A Justice may of his own Motion bind common Barretors (b), Hawkers or Hunters with Spanniels in other Mens Eared-Corn (c), Persons Going or Riding with offensive Arms, or an unusual number of Servants (d) bearing Weapons, or any whom he suspects inclined to break the Peace (e). But then when the Peace is granted

(a) *Dalton* ch. 124. (b) Barretor is a common stirrer up of Suits in court, or Quarrels in the Country, derived from the French *Barat* a Cheat. (c) 23 *Eliz. c. 16*. (d) By our Law such as ordinarily Ride with great Trains, or more than their ordinary Household, are liable to an arbitrary Punishment, *AB 5. PAR 17.1*. (e) A man for going in *Westminster-hall* with secret Armour under his Apparel, was committed without Bail by the Justices, and Forfeited his Armour. *Co. Bail & Mainprise, Fol. 23*.

at the Suit of another, the Justice must take his Oath, that he dreads future Bodily harm, or the Burning of his Houses, from the Person against whom he demands the Peace *a*.

3. The Peace may be granted against a Wife clothed with a Husband, and a Pupil under 14 Years of Age. But these are to be bound to the observance of the Peace by Sureties only, and not by their own Personal Bonds (*b*): Because they cannot effectually oblige themselves. A Husband may get his Wife, and she her Husband obliged to find Surety for the Peace. Nay, a Justice may grant the Peace against his own Wife (*c*). Some think that one Justice may bind another to the Peace (*d*), But others are of a different opinion (*e*); for that *par in parem non habet Imperium*. Ecclesiasticks may be bound to the Peace; unless they be Celebrating Divine Service, in which case they cannot be molested (*f*). But no Peer can be bound to the Peace by Warrant of a Justice, but only by a *Subpana* (*g*) out of the Chancery.

4. A Justice may take Money to ly in deposito for Security of the Peace, to be Forfeited to the

(*a*) *Dalton* ch. 116. as in *France* and *Flanders* they use to require *cautionem de non offendendo*: So we have another Legal preventive of a Breach of the Peace, by granting to Persons making Faith, that they fear harm from others, Letters of *Lawborrows* or *Horning* to Charge these complained on to find Caution, that the Complainers, their Wives, Children, Tenents and Servants shall be harmless, skaithless and unmolested in their Bodies, Lands, Possessions, Goods and Gear, by the Persons Charged, or their Order, under Penalties according to their Quality. Act 166. Parl. 13 J. 6. (*b*) *Dalton* ch. 117. (*c*) *Ibid.* (*d*) *Ibid.* (*e*) *Shepherd.* ch. 18. §. 5. (*f*) 1 R. 2: c. 15. (*g*) *Subpana* is a Writ to Summon Persons to Appear under a Penalty. *vid: part 1 pag 4.*

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Queen upon a Breach thereof (a). And if the Surety given for keeping the Peace, be found insufficient, he may require and compel to give better (b): But cannot oblige any to give new Surety upon the Death of the former.

5. A Person being convict of Breach of the Peace upon his Recognizance; the Justice may and should bind him over again to the observance thereof by better Sureties (c). But a Bond to keep the Peace is not Forfeited by moderate Chastisement of a Child under age by his Parent, of a Servant or Apprentice by his Master, or Schollars by their School-Master, of unrully Prisoners by their Jaylor; or by a Persons confining his mad Relations (d). For such as have a Natural or Civil Power over others, are allowed to correct them for their Offences. Nor is it a Breach of the Peace, to Beat or Wound another in self Defence, *servato moderamine inculpata tutele*. Nor is the Forfeiture Incurr'd by putting the Laws or Legal Diligence in Execution against Transgressors (e).

6. A Man committed for not finding Surety for the Peace, may be set at Liberty by Warrant of the Justice who bound to the Peace, upon the Death or Discharge of the Party, that required it against him (f). But not if the Recognizance were Forfeited before, whereby there is a *jus quæsitum* to a Forfeiture in favours of the Queen: In which case the Party bound must be discharged by the Sessions (g). Some are of opinion that a Person may be released of Surety for the good be-

(a) 1 Cro. 446. (b) Dalton ch. 116. (c) Ibid. (d) Idem. ch. 121. (e) Ibid. (f) Idem ch. 118. (g) Idem ch. 120.

haviour, in the same manner as of Surety for the Peace (a).

7. In England a Justice of Peace may, by virtue of his Commission, for further preventing Breaches of the Peace, cause a Night-watch to be kept from Sun-setting to Sun-rising, between the *Ascension-day* and *Michaelmas*. And may cause all Statutes for suppressing unlawful Assemblies (b), and Routs (c), to be kept (d).

8. In England, some hating to be, or stand bound to the Peace by Country Justices, do find Surety for the same in the Queens Bench, or in the Chancery : and thereupon procure a *Superseas*, to restrain the Justices in the Country from exacting Surety from them, or proceeding to cognosce the Breach of Peace, after Surety given to these Justices (e). Yet for hindring Contentious Persons, to elude the Authority of Country-Justices by sham Prosecution before these Courts at *Westminster*, at the instance of Confidants; It was Enacted (f) That all such Writs of *Superseas* should be Void and Null; unless granted upon sufficient Surety for the Peace and good Behaviour, approven in open Court; after it was there made appear, that Surety was justly and *bona fide* Pursued against the Person desiring the *Superseas*.

(a) *Idem* ch: 124. (b) An unlawful Assembly, in the Sense of the English Law, is, a meeting of 3 or more Armed unusually with an overt design to commit an unjust Act. Convocations of the Leidges without the Queens Order or Licence, is with us severely Discharged by several Acts of Parliament, for preventing the hatching and carrying on sinistrous designs against the Government, or any of Her Majesties Subjects. (c) A Rout is 3 or more Persons Armed unusually setting forward, in order to execute some unlawful design, (d) *Dalton* ch: 135. (e) *Idem* ch: 118. (f) 21. J. 4. 8.

9. But as I have already hinted (a), the Union-Treaty secures Causes in Scotland from being removed to Westminster: Tho' at the same time our Justices of Peace do but Judge in Subordination to the Supreme Courts in Scotland.

II.

What is done for Quashing Breaches of the Peace, and Punishing Peace-breakers.

By the English Law, a Justice of Peace may put himself, or any Person in Arms for suppressing Riots (b) and Rebellion, or for resisting Enemies (c); may command Prisoners brought before him to be Disarmed (d), and may cause Arrest (e) Persons with offensive Weapons in Fairs, Markets or elsewhere in Affray (f), and bind them to the Peace and good Behaviour, and seize their Armour (g): and farther may inflict a Fine upon the Offender (h). A Justice may cause all Statutes for suppressing Riots to be observed (i), upon the Queen's Charges (k). And in the suppressing a Riot may justify the Beating or Killing such as resist (l). If the next Justice of

(a) *Vide Supra*, ch. 1. (b) A Riot, by the Law of England, is the deliberate Execution of an Unlawful Design by three or more Armed Persons. But a Riot in our Law, is any Breach of the Peace committed by Oppression, or wronging the Queen's Lieges by Violence. (c) *Poph.* 121. (d) Yeaby the 10th *Ass.* Parl. 11. 7. 6. no Magistrate may keep a Thief or Malefactor in Arms with him. (e) Arrest, is the restraining ones Liberty against his Will. (f) Affray is properly where a Weapon is drawn, or Blow given or attempted, and is derived from the French *Affrayer*, to Affright or put in Fear. (g) 2 *Edw.* 3. c. 3. (h) 20 *R.* 2. c. 1. (i) *Dalton*, ch. 135. (k) 2 *H.* 5. c. 8. (l) *Lambard*, lib. 2. cap. 5.

Peace be Negligent in the suppressing a Riot, he Forfeits 100 Pound (a).

2. By our Law Riots are punishable Arbitrarily; we having no express Statute determining their Punishment.

3. If a Justice under a sham pretence of a Riot, commit a Man, tho there was truly no Riot in the case: The Party may have Action of damages against him (b).

4. In order to know how Breakers of the Peace are to be Punished; It may be proper to notice, That the Peace may be broken either by verbal, or real Injuries.

5. Under verbal Injuries, or such as touch a Persons Reputation, Libelling or Defaming is comprehended; and is a ground to bind to the good Behaviour, as having a tendency to breach of the Peace. And who utter Words of Contempt to a Justice of Peace, or other Magistrate in the Execution of their Office, may be Imprisoned till they find Surety for their good Behaviour (c). *For thou shalt not Revile the Gods, nor Curse the Ruler of thy People (d).* In which case *veritas convicii, non excusat injuriantem.* A Justice may also bind to the Peace those who in his presence Quarrel with hot Words.

6. Real Injuries are either committed against ones Person, or against his Goods. Wounding or Beating a Man are real Injuries against his Person. And a Justice may bind to the Peace such as beat one another before him: And may within Year and Day commit him that danger.

(a) 13 H. 4. c. 7. (b) Lambard, *ibid.* (c) Dalton, ch. 124, 114. (d) 22 Exod. 28,

oulsly Wound one in a fighting Quarrel, to remain in Prison till Year and Day is over, or he find Surety to appear at the next Gaol-Delivery (*a*). A Justice may cause apprehend such as Assault him, and commit them till they find Surety for the Peace: Though, otherways he ought not to Judge in his own Cause. But the greatest Injury that can be committed upon a Mans Body is Homicide, or the taking away his Life. And I shall by and by shew what a Justice should do in such a case.

7. Real Injuries against a Mans Goods are committed either by Fraud or Force, or by withholding from a Man what is due to him. I shall first speak of Fraudulent, then of Forcible Injuries, and lastly of injurious detaining from a Person what belongs to him.

8. By the Law of *England*, those who in the Night-time wilfully Burn, or cause to be Burnt or Destroyed any Rick or Stack of Corn, Hay or Grain, Barns, Kilns or other Houses or Buildings, or Destroy or Kill any Horses, Sheep or other Cattel, may by three Justices *Quorum Unus* be judged and punished with Death. Unless the Party convict shall chuse to be transported to Her Majesties Plantations: In which case the Punishment may be converted into Transportation for seven Years, within which space it is death for the Criminal to return (*b*). And

(*a*) According to the Law of *England*, That Prisoners might be brought to a speedy Tryal, *Justices of Gaol-Delivery* were Instituted by Commission to Empty and Clear the Gaols thrice in the Year, and oftner if needful, by Acquitting the Innocent and Condemning the Guilty. 4 *Edw.* 3. c. 2. 17 *R.* 2. c. 10. (*b*) 22 & 23 *Car.* 2. c. 7.

these Justices may Decern treble in Damages in favours of any Person Lefed by nocturnal Wounding Horses, Sheep or other Cattel, or destroying young Planted Trees, or demolishing Inclosures. But then these Crimes must be tryed within six Months; and no Person Examined as a Witness shall be proceeded against for any matters he discovers; And who refuse to appear to be Examined, or to make discovery upon Oath, may be committed without Bail, till he give Obedience (a).

*Adjudge
Injured*

9. By our Law, the Burning of Folks in their Houses, or the burning of Dwelling Houses, tho no Body were accidentally there, or the burning of Corns (b), or wilful Fire raising in Coal Heughs (c), is Treason. Wilful burning differs from Fire raising in this, That the one is the burning a particular Place with a design to destroy more; the other is the burning a particular place without any farther design. A Servant burning a House in a Town by Negligence is punishable by the Magistrates, his Goods should be given to the Party Lefed, and himself, Banished for three Years; and if he have no Goods, should be Scourg'd, and Banished for seven Years. A Person negligently by himself, his Wife, or Bairns, burning his own House, tho Neighbours be not thereby Prejudged, incurs three Years Banishment; a Tennent so doing must Repair the Damage, and submit to so long Banishment; and a Stranger or Traveller guilty of the like Offences must be Arrested till he Repair the Da-

Coal Pits

injured

prejudiced

(a) *Ibid.* (b) *Act 8. Par. 3. J. 5.* (c) *Act 146. Par. 12. J. 6.*

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mage, and in case of Insolvency, must lie in Prison during the Queens Pleasure. And Barons are to punish for Fire happening in their Burghs (a).

Ham- stringers The slayers or houghers of Horse or Oxen or other Cattel in time of Labouring, the destroyers and cutters of Growing Trees and Corns, the breakers of Milns, stickers and fellers of Oxen or Horse in time of Leading Corns or Fewel, and their Maintainers and Refetters are punishable by Death as Thieves, and the Maintainers and Refetters of Thieves (b).

10. By the Law of *England*, who Unlawfully Cut or Take away any Growing Corn, or Rob Orchards or Gardens, break or cut Hedges, Pails, Rails, or Fences, dig, pull up, or take away Fruit Trees, cut or spoil Woods, Underwoods, Poles or standing Trees, their Procurers and Receivers knowing the same, may be ordered by a Justice for the first Fault to give due Satisfaction to the Party injured, or to be Whipt in case of inability, and to suffer Whipping for all such after Offences (c). And any suspected Person in whose Custody any Wood, Underwood, Hedge-Wood, Poles, young Trees, Bark of Trees, Pails, Rails, Gates, Stiles, Posts are found, is presumed Guilty of the foresaid Offences of cutting and spoiling Woods, Underwoods, &c. and punishable over and above Satisfaction to the Party Lesed, by Payment of a Fine to the Poor, not exceeding Ten Shillings for the first time, and Whipping or Confinement to the Correction-House not exceeding a Month in case of not per-

Injured

(a) *Act 75. Par. 4. J. 1.* (b) *Act 110. Par. 7. joint Act 82. Par. 11. J. 6.* (c) *43 Eliz. c. 7.*

formance;

formance; and for the Second, shall be sent to Labour hard for a Month there; and for the third time, shall be Punished as an Incorrigible Rogue. Unless he can instruct how he came *makes appear* Honestly by these things. And the Buyer of Stollen Wood from a Person who might be justly Suspected to have unlawfully come by the same, shall pay treble the value to the Party, from whom it was Stollen, to be Levied by Distress; and for want of Distress, shall suffer a Months Imprisonment. But these Penalties must be Pursued within six Months after the Offence (a).

II. By our Law, those who Cut, Break, Pull up, or Peill the Bark of any Tree within ten Years Growth, are liable to the pain of 10 pound, and for each Tree of elder Growth, to 20 Pound. And the Haver and User of the Timber incurs the like pain, unless he produce the Person he got it from. And the Insolvent must Work for his Fine to the Heretor, at half a Merk *per Diem.* $6\frac{2}{3}$. And no Person must break down, or fill up Dike, Hedge or Ditch, or Leap, or suffer Horse, Nolt or *Black Cattle.* Sheep to go over them under the said pain of 10 Pound *toties quoties*, half to the Heretor, and half to the Mending of Ways and Bridges. Which Penalties are to be Pursued before, and Applied at the Sight of the Justices of Peace, or other Judge Ordinary (b). Tenants and Cottars *Under-tenant* should preserve the Planting on their Possessions, from injury by any in their Houses, under the pain of 10 Pounds for each Tree, within 10 years old, and 20 Pounds for each Tree of a greater age, to be exacted only by their Masters (c). He-

(a) 15. Car. 2. c. 2. (b) 44 39 Par: 1. Sess. 17. 7. (c) 44 16. Par 1. Sess. 7. K. 17.

retors and other Possessors of Lands, are ordained to cause Herd their Horse, Nolt, Sheep, Swine and Goats, in both Winter and Summer, and to House and Inclose them in the Night; so as they may not eat or destroy their Neighbours Ground, Woods, Hedges or Planting, under the pain of half a Merk *quoties quoties*, for each beast found on a Neighbours Ground, beside the Damage: For which the Beast may be detained [a]. Stealers, Peillers, or Destroyers of Green-wood or Hained Broom, Breakers of Yards or Orchards, without consent of the Owner; Breakers of Dove-cots, Cunningairs and Parks, must pay to the Owner, by and attour the Damage, 10 Pound for the First Fault, 20 Pound for the Second, and 40 Pound for the Third. And the Insolvent Delinquent should be put in the Stocks, Prison, or Irons, eight Days on Bread and Water for the first Fault, 15 Days for the Second, and a Month for the Third, and be Scourg'd at the Months end; except the Irresponfal Breakers of Dove-coats, Cunningairs or Parks, who are to be Hang'd for the Third Fault [b]. And two Courts should be held Yearly at Pasch and Martinmas, for Punishing Contraveeners of Acts of Parliament, concerning the Cutting of Green-Wood [c]. Stealers or Destroyers of Bee-hives are liable to the pain of 10 Pound, and amends to the Party Lesed, and the Offence ordained to be a Point of Dittay. And where Children under age Offend in this sort, their Fathers or Masters must either deliver them to the Judge to be

*Warrens.
Inclosures
over and
above.*

*Warrens &
Inclosures*

St. Novem.

*injured
a part of
of causation
of charge
brought
against him*

(a) Act 1. Par. 1. Sess. 2. 7. 7. (b) Act 84. Parl. 6 7 6. (c) Act 30. Par. 1. 7. 6.

Justices of Peace.

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Secure'd, or pay 13 *sh.* 4 *d.* for each of them [a]. All former Laws against the Breaking Woods, Parks, Dikes, Fences, Inclosures or Pastures, or Cutting Broom or Grass within the same, or the Breaking Dove-coats, Stealing Bees and Fishes in proper Stanks or Lochs, are Ratified by the *Walls.*
Ponds or Lakes
Warrens.
Hives [b]. And Offenders made conveyable before any Inferior Judge, provided the said Inferior Judge inflict no Penalty exceeding 40 Pounds. And our Justices of Peace are expressly Authorized to execute all Laws against Cutters or Destroyers of planting, Green-wood, Orchards, Gardens, Hainings, Breakers of Dove-Houses, and Cuningares, Stealers of Bees or Hives [b]

12. By the Law of *England*, Stollen Horses sold in open Market, may be Claimed before a Justice of Peace by the Owner from whom they were Stollen within six Months [c]. And the Justices are Judges how far Property is lost by Sale of Stollen Goods in open Market. Where Stollen Horses having been in the Fair an Hour between 10 a Clock in the Forenoon, and Sun-setting, and Sold after Booking, Enttring and paying Toll, cannot be sought back from a Buyer *bona fide* (d). A Justice may Punish Silk-winders or Doublers, for Imbezling any Silk delivered to them, or the Buyers of so Imbeziled Silk (e). May Fine a Seller of Butter in 20 Shilling the Firking, for Altering or Mixing the same with worse after the Cask was Sealed or Marked by the Buyer, or for being Guilty of any other Fraud in the Mat-

(a) *Act 69. Par 6. J. 4.* (b) *Vid. Pars 1. pag. 5.* (c) *31 Eliz. 6. 12. J. 4.* (d) *2 & 3 Ph. & Mar. c. 7.* (e) *14 Car. 2. c. 15. §. 6*

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ter; to be Levied by Constables by Distress and Sale of Goods, half to the Poor, and half to the Informer. And the Justice may commit the Offender, who has no Goods till he satisfie (a). Yea a Justice may commit one, even for Cheating another at Play (b). Two Justices *quorum unus* may bind over to the Sessions, a Person suspected of deceitfully getting Money or Goods into his hands by false tokens, or Letter in anothers name (c).

13. By the Law of Scotland, Property in Moveables is presumed from Possession; and in *rei vindicatione*, the Owner must instruct *quomodo desit possidere*. And we have no such Privilege of Fairs as they have in England. So that those who buy any thing here in Publick Market, must not think themselves secure from being Questioned, if the Seller had not a good Right to what is Sold: unless the Buyer take Burgh and Hamhalt from the Seller (d).

Vouchers for
any thing
sold in a
publick
Market

14. For clearing what Justices of Peace are to do for Redressing forcible Injuries: It may be proper to observe, That Law is so careful to check and discourage the using of Force in any case, that it doth not allow a Man to do himself Justice in taking his own by violence (e): *ne occasio sit majoris tumultus* (f). Therefore by the English Statutes (g), any Justice of Peace may Punish forcible entry to, or detaining Possession without order of Law, by Imprisoning the Offender till

(a) 4 & 5 W. & M. 7. (b) Cro: Car: 236. Jones 249. 2 Roll: Rep: 107. (c) 33: H 8: c 1: s: 3. (d) March 19: 1639: Ferguson contra Forrest. Stair Inst lib. 2 tit F. 6: 42. (e) l 13 ff quod metus causa l pen. & ult. ff. ad l Jul. de vi pub. (f) l. 176. ff. de Reg: Jur. (g) 5 R: 2. c: 7: 15 R. 2. c. 2: 8. H. 6. c. 9.

he make Fine (a) to the Queen. And may re-
possess the dispossessed Party (b). But his Pro-
cedure may be stopt by a *Certiorari* out of the
Chancery, or Queens-Bench (c). By an Act of
the Parliament of Great Britain (d) Commission-
Officers without warrant of a Justice of Peace
forcibly Enttring or Breaking open any House
under pretence of searching for Deserters shall
be Casheer'd.

15. We call the taking away of Moveables *Spuilzie*
without order of Law or Consent of the Owner *prononnu*
a Spuilzie; The unwarrantable enttring to possess *Spulzie*
Lands, whereof no Body is in the natural Pos- *It signifies*
session our Law Terms *Inrusion*; and the violent *Illegal dis-*
casting out a Possessor, goes under the name of *training*
Ejection. For all which civilly Pursued within *of Goods*
three years, Restitution may be Claimed with
violent Profits, i. e. the utmost advantage that
might have been made of them estimated by the
injured Parties Oath *in litem* (e). But if the
Pursuit be longer of Commencing, it must be
restricted to simple Restitution with ordinary
Profits. Wherein the Pursuer is not obliged to *Plaintiffe*
Dispute his Right; *Quia spoliatus ante omnia est*
Restituendus. But these Offences may be Pursued
also as Riots, in order to an Arbitrary Punish-
ment: which Actions prescribe not.

16. The ordinary Defences against a Riotous
Ejection are 1. That by Writ it was agreed that

(a) *Fine* is taken in several Senses in the English Law. Here it
imports a Pecuniary Penalty or Money-fine. So that to make *Fine*
to the Queen is, as who should say, to undergo a Pecuniary Punish-
ment for an Offence committed against Her Majesty and Her Laws,
(b) *Dalton ch. 130, 131.* (c) *Idem ch. 133.* (d) 6 A: c: 20: (e) *Act*
31: Par: 6: J: 6.

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one Party might eject another, in case of not Removing at an appointed day. But to sustain this where opposition was made, were to allow private Persons to usurp the Power of the Magistrate: and therefore such a Paction can only excuse Ejection without Resistance. 2. That the Ejecter had been violently Dispossess'd before by the Complainer, and did but *ex incontinenti* recover his Possession. For *vim vi repellere licet ex Incontinenti* (a) ; i. e. as the Civil Law explains it, *priusquam ad aliud negotium fuerit recessum*. But with us the time to be allowed for Repelling violence is *in Arbitrio iudicis*.

17. Robbery and Oppression are also real forcible Injuries, from which Men are Fenced by Law. Robbery, which is violent avowed Theft, and comes from the German Word *Raube*, is with us called *Stombriff*, and punishable by Death.

18. By the Law of England, The County wherein a Person is Robbed in the Highway, or any open Place, must make up his Loss: He giving notice of the Robbery with convenient speed to some in the next Town or Village, commencing his Suit after forty Days and within a Year of the Robbery, and being examined upon Oath before a Justice of Peace, if he knew any of the Robbers. And he ought to give Bond before the Justice to prosecute such of them as he owns himself to know. If the Person Robbed recover his Damages against one or few Persons of the County, two Justices *Quorum Unus* may for their Relief impose a Tax proportionably upon every

(a) L. 3. § 9. l. 17. ff. de Vi & Vi armata.

37

receiving
or Collecting
* Distraint.

(a) 27 Eliz. c. 13. (b) 29 Car. 2. c. 7. § 5. (c) 4 & 5 W. & M. c. 8. (d) *Mackenzie*, *Grim.* Part 1. Tit. 34. § 5.

partakers of the Theft. Refettors or Assistors of Robbers, or Intercommuners with them for that effect, are declared Art and Part (a). Sheriffs, Stewarts, Magistrates of Burghs, and others may, for their refusal to apprehend notorious Thieves, be pursued Criminally as partakers of their Guilt, or Civilly for Damage and Interest to the Party Lefed (b). For the more effectual suppressing Robberies in the *Highlands*, Land-lords, Heretors, and Leaders of Clans, were ordained to find Caution that they and their Tennents, Servants, and Dependens should be Answerable to the Kings Laws and Justices, and should not Rob or Injure any of the Liedges; and should Redress all Parties Lefed by them (c). Which Laws were made for the same Reason of necessity and publick Interest, that those who have Power of Jurisdiction from the Emperor are obliged *vias publicas a Latronibus purgare* (d): And that in *England* the Parish is liable for Robberies committed therein between Sun and Sun. But then this Obligement for other Mens Transgressions is, like the *Actionalis* in the Civil Law, satisfied by either paying the Damage or presenting the Delinquent. For a yet farther Check to Robbery in *Highland* Shires, where a Person Robbed of Horse, Nolt, Sheep, Goats, or other Cattell and Corns, raises the Hue and Cry to their Neighbours, that they may pursue the Robbers, and so from Parish to Parish; *Heretors, Liferenters, and proper Wadsetters, within the Parish where the Robbery

(a) *Alt* 21, Par. 1. J. 6. (b) *Alt* 16, Par. 10. J. 6. (c) *Alt* 93, 103, Par. 11. *Alt* 262 Par. 15. J. 6. (d) *Gail. Observ.* 64 lib. 2. l. 3. l. 13. *ff. de Officio presidis.*

Partakers
of Robberies
Partakers

injured

Security

injured

Black Cattle

* Landed
Persons -
in Town or
Country

Possessor
of
Liferent

a sort of Mortgage

is committed, and within the adjacent Parishes are liable to refund the Parties Loss proportionably according to their valued Rents; who are to have Relief from their Tennents of a half of their Proportion, and also Relief from the Heretors and Tennents in other Parishes through whose Lands the Robbers pass or repass, as if these Lands lay within the Parish where the Robbery was committed: Unless these Heretors and Tennents both raise the Hue and Cry after the Robbers, and rise in Arms to concur for apprehending them, & recovering the said Goods. But no Heretors or others who Refect, Converse, or Intercommune with the Robbers shall have any benefit of Relief (a). The Sovereign was also authorized to grant Commissions of Justiciary, but prejudice to heretable Rights and Jurisdictions, and the Acts anent Clans and their Chiftains, were extended to the Case of the Publick Peace, for preserving thereof (b). Which Commission of Justiciary was several times prorogated, and the Commissioners allowed to proceed by Indictment on a Citation of six days, and to advise with closs Doors: And to punish Arbitrarily Persons guilty of Crimes liable to the Pain of Death by Law (c). Depredations, Reifs and Spuilzies are ordained to be first civilly decided (d). Yet the Lords of Justiciary use to sustain criminal Pursuits for these Crimes in *prima Instantia*; unless the Defender offer to prove that what he took away was his

refund.

receive

concerning

¹⁷ (a) Act 4. Sess. 3. Par. W. & M. (b) Act 39. Sess. 4. Par. W. & M. (c) Act. 37. Sess. 5. Act. 40. Sess. 6. Ibid. (d) Act. 34. Par. 5. J. 4.

own, in which case they allow the Civil Title to be first discusst.

*Custom house
Officers-*

20. Oppression, is the doing or taking under colour of Authority, what is not warranted by Law. Such as Customers exacting more than their due (a); or taking Fee from Merchants for entring their Goods (b). Commissioners or other Persons imployed about the Excise, taking Money or Reward from any but the Queen for doing their Duty (c): Which may be tried and judged before the Justices of Peace. Any Person under colour of Purveyance or Provision for the Queen, taking Timber, Fuel, Cattle, Corn, or other thing whatsoever, or summoning any Carriage without the Owners Consent, may at the Request of the Party grieved be committed till the next Sessions, by a Justice of Peace, and the Constables of the Paroch (d).

*make
mistake*

21. Justices of Peace are also competent in some cases to Judge the injurious withholding from a Person what is due to him. So by the English Law, two disinterested Justices may order Quakers to pay their Tithes or other Church Rates due by them not exceeding Ten Pound; which upon their Refusal to pay, one Justice may give Warrant to Pound for (e).

22. Offences next in degree to Petty Treas-

(a) Act 46: Part 4: J. 4. (b) 11 H. 6. c. 15. (c) 1. W. & M. c. 24. (d) 12: Car: 2: c. 24: § 13: & 14. (e) 7: & 8: W. 3. c. 34. 13. & 14. W. 3: c. 4.

son (a). Such as Murder, self Murder, Theft, Robbery, burning or breaking of Houses, &c. are called Felony (b) in England. Every Justice of Peace should cause instantly Hue and Cry (c) and search to be made by the Sheriff and Constables, upon notice given him of any Robbery, Theft, or Murder committed (d). He should also examine all such Felons, or Persons suspected of Felony brought before him. And bind over the Informer and Witnesses to the next Goal-delivery, or report their Depositions in case of their Inability to travel, and commit the accused to Prison, who may be bailed, if bailable, by two Justices *Quorum unus*. A Justice neglecting to certify these Examinations, Informations, or Bailment to the next Goal-delivery, or to bind the Informer and Witnesses to appear and give Evidence there, may be fined by the Justices of Goal-delivery according to their Discre-

(a) The *English* Law divides Treason into High and Petty Treason. The first is an Offence committed against the Security of the Kingdom. Petty Treason is incurred by committing wilful Murder upon a person to whom the Murderer oweth Obedience, as when a Wife kills her Husband, a Child his Parent, a Servant his Master, &c. we divide Treason into, 1. Perduellion, or High Treason, which is rising in Arms against the Sovereign. 2. Ordinary Treason, or lese Majesty. Under this we comprehend the Concealing and not revealing Treason, when the Concealer could have prov'd it. Which Crime in the *English* Law is called *Misprision of Treason*, from the *French*, *Mespris*, which signifies Neglect or Contempt, and punished only by perpetual Imprisonment, Forfeiture of Goods, and the Profits of Lands during Life: But by our Law it infers the Pain of Death. 3. Statutory Treason, which not being of its own Nature, but by Statute declared Treason, answers to Petty Treason in England. (b) Which is derived by some from *Felleus, quasi felis animi factum*; by others from *Felon*, which in *French* signifies Cruel. (c) This Hue and Cry was called *Quiritatio* by the Romans. (d) *Dalton* Chap. 40.

on (a). But for Petty Larceny (b) which is the fraudulent taking away anothers personal Goods, not exceeding Twelve Pence in Value, without his Will or Knowledge; and for other small Felonies determinable in the Quarter Sessions of the Peace, the Justice may bind over, and certifie to the next Sessions (c). And may commit to Prison an Informer or Witness refusing to enact himself to give Evidence upon the Offenders Trial (d).

23. This sort of Precognition of Heinous Criminals by Justices of Peace is also warranted and enjoined by our Statutes, (e).

(a) 2 & 3 Ph. & M. c. 10. (b) Larceny is derived from *Latrocinium*, and is divided into Grand and Petty Larceny, whereof the former is the Stealing of Goods above the value of Twelve Pence, and punishable by Death: Unless the Offender be favoured by his Clergy. For understanding whereof, it may be considered, That the Canon Law having exempted the Persons of Clergy-Men from Temporal Jurisdiction; This Benefit of the Clergy was of old introduced in *England* to save in certain cases, the Life of a Criminal who had Learning, as one that might be useful to the Publick. In which Days of Ignorance, Men pass'd Muster as Learned upon this very slender Test yet continued: The Person found Guilty of such a Capital Crime as this Priviledge is granted for, is put to read at the Bar. Whereupon if the Ordinaries Commissioner or Deputy standing by, say, *Legis ut Clericus*, he is Burnt in the Hand and set free for the first time. (c) *Ibid.* & *Dalton*, Chap. 40. (d) *Ibid.* (e) *Vide* Part 1. Page 15.

SECT. II.

What Justices of Peace are concerned to do for curbing Immorality and Prophaneness.

IT is an old and true saying, That *nunquam res humana prospere succedunt, ubi negliguntur Divina*. Therefore it is specially recommended to Justices of Peace, to see that the Moral Law be observed; and some face of Religion kept up within the bounds of their inspection.

2. A Justice of Peace may arrest Whores, Whoremongers, and such as haunt Bawdy-Houses, and put them to find Surety for their good Behaviour (a). By the Law of England a Justice of Peace may bind to the good Behaviour any Person suspected to have begotten a Bastard-Child, and cause him find Surety for his Appearance the next Sessions. And upon the Birth of the Child, if likely to be Chargeable to the Parish, two of the next Justices *quorum unus* shall, according to their Discretion, provide for it by charging the Mother, or Reputed Father, with a Weekly Payment to the Church-wardens for his Maintenance, and Punish both (b). Who for refusal to give obedience, or find Surety to perform, may be committed: unless they Appeal to, and find Surety to appear at the next Sessions. Yea, The Woman may be sent to the House of Correction, to Work for a year. And if she Offend in that manner a second time, is not to be set free, without giving Surety for her good Behaviour (c). If the Pa-

its

(a) Dalton ch. 124. (b) 18 Eliz. c. 3. 7 Jac. c. 4. §. 7.
(c) Ibidem, rent

44 *The Duty and Powers of*

rents of a Bastard-Child are not able to maintain it, the Parish where it was Born must do it. But where the Mother and Reputed Father having Means and Estate march off, and leave their Child upon the Charge of the Parish, the Church-wardens and Overseers of the Poor thereof, may upon a Warrant from two Justices, introuet with so much of the Parents Goods or Rents, and by order of the Sessions sell the same for the Childs Inter-aimment (a).

Collect-

3. By our Law, common Women were ordained to be put at the outmost end of Towns, where least hazard of Fire is: and no Man was allowed to let them Houles, or Relet them in the heart of the Town, under the Pain of an Unlaw (b). And Fornicators are Fineable according to their Quality by Justices of Peace (c).

*lodge
outlawry*

4. By the Law of England, a Justice of Peace may Fine Inn or Alehouse keepers, or Victuallers in ten Shillings, for suffering idle Drinking or Tipling in their Houses, which Constables or Church-wardens are to Levy by distress (d) for the use of the Poor, to be Sold after six days, for Payment of the Fine. And for want of distress, the Delinquent is to be committed till he give Satisfaction, and to be incapable for three years thereafter, to keep any such Drinking House (e): Nor can he be licens'd within three years (f). A Justice of Peace may also Fine the Idle Drinker

(a.) 13 & 14. Car. 2. c. 12. §. 19. (b) *Att 7 c. 1 ar. 4. §. 1.* (c) *part. 1. pag. 14.* (d) i. e. a thing Distreined, or Pounded, in order to cause the Owner to redeem the same, or satisfy the Debt Distreined for. My Lord Coke *Inst. part. 1. lib. 2. cap. 6. sect. 136.* Says: that distress, is in Latine called, *Distressio sine Augustia*, because Cattle Distreined are put into a Strait called a Pound. (e) 1 Jac. c. 9: 21 §. 21 7: 1 Car. 1: c. 4. (f) *Dalton ch. 7.*

or Tipler in three Shilling four pence: and may Fine for Drunkenness within six Months in five Shillings for the first Fault; and for the Second may exact from the Delinquent, a Recognizance of ten Pound, with two Sureties for his future good behaviour. Which Fines of three Shillings four Pence for Tipling, and five Shillings for Drunkenness must be paid to the Church-wardens for the Poores use, within a Week after conviction. And for Insolvency, the Drunkard is to be set in the Stocks, for the space of six hours, and the Tipler for four hours Space (a).

5. by our Law, no Man once durst be found in Tavern or Ale-house within Burgh at night, after the Ringing of the nine hour Bell; under the pain of Imprisonment (b). But the Ringing of this Bell was made an hour later at the desire of the Earl of Arrans Lady; and therefore called the Ladies Bell. Whereupon all Persons convict of Drunkenness or haunting Taverns or Ale-houses after ten a clock at Night, except in the time of Travel, or for Refreshment, were first made liable to the same Punishment and Penalties (c). But now are Punishable according to their Quality: viz. A Nobleman pays 20 Pound, a Baron 20 Merks, a Gentleman, Heretor or Burgeis 10 Merks; the Yeoman 40 Shilling, the Servent 20 *tories quoties*; and the Minister the Fifth part of his Stipend. The one half of these Penalties to be applied to pious uses in the Parish where the Offence was committed; and the other half to be divided betwixt the Informer and

within the Freedom.

upon a Journey.

(a) 4. J. c. 5. 21 J. c. 7. (b) 48 144 Par. 13. J. 1. (c) 48 20 Par. 22. J. 6.

Prosecutor, and the Constable and other uses at the sight of the Justices. And the unable to pay, are to be punished in their Persons (a).

6. By the Law of *England* three Justices *quorum unus* may out of Sessions take Information against such as deprave or speak irreverently of the Sacrament, of the Body and Blood of our Saviour Jesus Christ, within three Months after the Offence, and may bind the Accusers and Witnesses, by Recognizance in five Pound a piece to give evidence; and may Bail the Offender (b). And any Justice of Peace may put the disturbers of divine Service, or abusers of Preachers, or Teachers to find Sureties for the good behaviour, under the pain of 50 Pound, or commit them till the General Sessions (c). Our Justices of Peace may in like manner take Information of such Offenders, and oblige them to find Surety, and bind Accusers and Witnesses to Prosecute and give evidence: and the Sum for which Parties and Witnesses are to Enact themselves, is left to the discretion of the Justices of Peace (d).

7. By the Law of *England*, any Justice of Peace may Fine for Swearing or Curling, within ten days after the Offence, a Servant day Labourer, common Soldier and Seaman in one Shilling, and every other Person in two Shilling, and may double the Forfeiture for the Second, and treble it for the Third Offence; to be Levied by Constables or other Parish Officers by distress for the Poors use. The Insolvent Offender above 16 Years of Age, to be set an hour in the Stocks

(a) *23* 19. *Par. 1* *Sess. 1. Ch. 2.* (b) *1* *Edw 6. c. 1.* (c) *1* *W. & M. cap. 13.* (d) *Vid* *Part 1. Page 3. Junct* *Page 15.*

for a single Offence, and two hours if several Offences be proven upon him at the same time. And the Insolvent Offender not 16 years old, should by warrant of the Justice be Whipt by the Constable, or by his Parent, Guardian (a), or Master, in presence of the Constable. The Justice neglecting his Duty herein Forfeits five Pound, whereof the Informer gets a Moiety. Every Justice should Register in a Book all such Offences proven before him, and Report the same to the Quarter-Sessions, to be there entred on Record by the Clerk of the Peace (b).

8. By our Law, Cursing and Swearing is Punishable as Drunkennels. And the Fines of both are to be applyed the same way (c) at the sight of the Justices of Peace.

9. Both the *Scots* and *English* Laws have carefully provided against abuse of the Lords day. The Moral observance whereof is not only of Divine Institution; But very expedient for preserving the lively Impression of Christian Duty.

10. By the *English* Law, a Justice may, for using unlawful Exercises or Pastimes on the Sabbath-day, Fine within a Month of the Offence in three Shillings four pence, and commit the Insolvent Offender three hours to the Stocks (d). Butchers Selling or Killing Victuals on that day Forfeit 6 shilling 8 pence, if Pursued within six Months before a Justice of Peace (e). Who may Fine in five shillings, any Person of the age of 14, doing Worldly Labour or Businels, ex-

(a) The same with a Tutor or Curator in our Law. (b) 6 3: 7. W. 3. c. 11. (c) Act 19: Sessi: 1. Par 1. Act 22: Sessi: 3. Par. 2. ch 2. (d) 1 Car. 1. c. 1. (e) 3 Car. 1. c. 1.

cept Works of Necessity & Charity on the Lords day. And who are convict before a Justice of Peace, of crying or exposing to Sale, Wares, Fruit, Herbs, Goods or Chattels whatsoever, except Meat in Inns, Cook-shops or Victualling Houses, and Milk before nine in the Morning, or after four in the Afternoon, forfeit the same. Drovers, Horse-Couriers, Waggoners, Butchers, or Heglers (a) Travelling or coming to their Inns on the Lords day Forfeit 20 shilling, and who use or Travel on that day with any Boat, Wherry, Lighter or Barge, except by allowance of a Justice of Peace, Forfeit five shillings *toties quoties*; if prosecuted before a Justice within ten days after Commission of the Offence. Who may set the Offenders, in case of their Insolvency in the Stocks for the space of two hours (b). These Penalties for the Breach and Prophanation of the Lords day go to the Poor: save that the Justice may Reward the Informer with a third thereof (c).

11. By the Scots Law, the using of Handy-labour on the Sabbath-day, was Discharged under the pain of ten Shilling, Gaming, Playing, Passing to Taverns or Ale-houses, Selling of Meat and Drink, and wilful remaining from the Church, the time of Sermon or Prayers, was prohibited under the pain of 20 Shilling. And the Offenders unwilling or unable to pay, were liable to be put in the Stocks or Jogs (d). And Persons found guilty of Selling or Presenting to sale any Goods on the Sabbath, were to lose their Moveables, and fall in the Sovereigns Mercy (e).

(a) i. e. Those that bring Provisions out of the Country to Sell at Peddlers Doors. (b) 29. Car. 2. c. 7. (c) *Ibid.* § 2 & 3. Car. 1. c. 1. (d) *Act* 70. Par. 6. §. 6. (e) *Act* 198. Par. 14. §. 6.

Thereafter the foresaid Acts were ratified, and all going of Salt-pans, Milns, or Kilns on the Lords day, Discharged under the pain of 20 pounds, to be paid by the Heretors and Possessors thereof; Salmond-Fishing, hiring of Shearers under the pain of ten pound, half to be paid by the Hirer and Conducer, and half by the Persons hired. Carrying of Loads, Keeping of Mercats, and using Merchandise on that day, and all other Prophanation thereof was also prohibited under the like Penalty of ten pounds; to be applied as the Penalties for Drunkenness, and Swearing. And the Insolvent to be punished in their Persons (a).

12. In Short, our Justices of Peace should order Constables to apprehend despisers of Church censure (b). And are enjoyned to put the Laws concerning Prophaneness to Execution at all times, without necessity of a Dispensation (c), against all Persons under the pain of 100 pound *tories quoties* to the Poor, for refusal upon Requisition, to be Pursued Summarly before the Lords of Session (d).

(a) *Act 18 Sess. 1. Par. 1. Act 22. Sess. 3. Par. 2. Ch. 2.*

(b) Part 1. page 9. *in fin.* (c) For with us no Judicature could Sit to Judge Civil Causes in time of Parliament, without a Dispensation from the Parliament: Nor can any Inferiour Court Sit in Vacation time till after *Michaelmas* Head Court, without a Dispensation from the Lords of Session. But Crimes may be Cognosced at any time without necessity of Dispensation: Because *Interest Reipublice ne Crimina maneat impunita.* (d) *Act 13 Sess. 5. Par. 1. W. vid. Part 1. page 13.*

S E C T. III.

Works of Charity and Piety, that Justices of Peace are employed about.

THO there be many kinds of Pious and Charitable Works, I shall here consider only the Business of Justices of Peace in relation to the Poor, and Places infected with the Plague.

2. By the Law of England, The Church-wardens of every Parish, at least two Substantial House-keepers, are appointed Yearly within a Month after *Easter*, to be Overseers of the Poor by two Justices *Quorum Unus* Dwelling in or near the Parish, under the pain of five Pound to every Justice in any Parish where the Nomination of Overseers is Neglected. The Majority of which Church-wardens and Overseers are to take Order by Consent of two Justices, for setting the Poor on Work, and binding Poor Children Apprentices (a). And are Impowered to raise by Taxation on the Parish, not excepting the Minister (b), a competent Sum for that end, and for relieving the Impotent Poor. And such as refuse to Pay their Proportion, may by Warrant of two Justices

(a) But one Justice may bind an Apprentice. Fatherless Children are to be set at Work, and Maintained where their Parents died, and not to be sent to the place of their Birth, *Dalton*, cap. 46.

(b) The Assessment for the poor ought to be made according to the Inhabitants visible Estate within the Parish, without regard to any thing belonging to them elsewhere; and the Tenants and Occupiers of Lands, and not the Heritors are to be Taxed. *Jenk.* 327. *Pl.* 40. Mr. *Dalton*, Cap. 46. is of Opinion, That if Persons Asses'd die before the Money is Collected, a new Rate should be made.

have their Goods Pounded, and failing of Goods, *Distraint* may be committed without Bail till they Pay. Parents and Grand-Parents (a), Children and Grand-Children of Impotent Parents, for every Month they fail to pay the Contribution for their Maintenance imposed by the Quarter Sessions, Forfeit Twenty Shillings, to be Levied by the like Warrant. If a Parish is not able to relieve their Poor, two Justices may Assess any other Persons within the Hundred (b) for that end as they think fit. Where any Parish lies partly within the Liberties of a Burgh, partly within the Shire, or lies in two Shires, the respective Justices should meddle only within their own Limits; But the Overseers must execute their Office without Division. Such Poor as refuse to be set on Work by the Overseers with Consent fore said, may be sent to the House of Correction by one Justice (c). And Poor Children between seven and fifteen Years may be bound Apprentices (d). Overseers of the Poor may by Consent of two Justices *Quorum Unus*, or of one Justice, if there be no more within the District, set up and use any Trade for setting the Poor at Work (e). Poor Parents hindering their Poor Children to be

(a) The Husband of the Grand-mother is understood a Grand-father, if his Wife at their Marriage had, or after succeeded to sufficient Means, *Styles* 283, the like would hold against a Step-father. (b) Hundred is a part of a Shire, so called, either because at first it consisted of 100 Families, or afforded 100 Men to the Sovereigns Wars. The division of Shires into Hundreds, *Alfred* 29 King of the *Saxons* borrowed from *Germany*. The Jurisdiction of which Hundreds, some few excepted, is now transferred to the County Court. Our Justices of Peace divide their respective Shires into Districts. *Vid. Part 1. pag. 62.* (c) 43 *Eliz. c. 2.* (d) *Ibid.* § 5. 7 *J. c. 3.* § 5. (e) 3 *Car. 1. cap. 4.* § 22.

bound Apprentices, or inticeing them away after they are bound, shall be sent to the House of Correction. Servants and Apprentices turning Impotent are to be Maintained by the Parish where they Served a Month at least. None may be suffered to Beg without leave of the Overseers. And two Justices may License the Diseased Poor to Travel to the Bath; so they Beg not [a]. But any Shipwrack'd Person, Poor Souldier or Mariner, having a Testimonial and License to Pass to their own Home in a convenient time, from a Justice, of, or near the place of their Landing, may lawfully Beg Relief by the Way for their Passage [b]. A Person may be received to inhabit in any Parish, bringing a Certificate under the Hands of the Majority of the Church-wardens or Overseers of the Poor, allowed by two Justices of Peace of the part he came from. But when he becomes Chargeable and to need publick Relief, he and his Children, tho Born in the New Parish, shall be Removed to the Parish from whence he came [c]: Unless he hath acquired a legal Settlement in the New Parish, by taking a Lease to the Yearly Value of ten Pound, or by exercising some annual Office [d]. Persons to whom Poor Children are appointed by two Justices to be bound Apprentices, refusing to take, and provide for them, Forfeit ten Pound to the Poors use [e]. Two Justices of the Peace or Church-wardens of the Parish, and Overseers of the Poor, with Consent of such Justices may bind and put Poor Boys

[a] 39 Eliz. c. 4. § 7. 1 J. C. 25. § 20. [b] 39 Eliz. c. 4. § 14.
[c] 8 & 9 W. 3. c. 30. § 1. [d] 9 & 10 W. 3. c. 11. [e] 8 & 9
W. 3. c. 30. § 5.

of the Age of ten Years or upwards to be Apprentices in the Sea-Service until they attain to 21 Years. And the Church-wardens and Overseers should pay to the Master of the Ship to whom the Boy is bound fifty Shillings to provide Clothing and Bedding for him, and be at the Charges of carrying him to the Port the Master belongs to, to be allowed in their Accounts. Others to whom Poor Parish Boys are bound Apprentices according to the 43 *Eliz. Cap. 2. §. 5.* may with Consent of two Justices of Peace assign and turn them over to any Masters of Ships, during the Remainder of their Apprenticeship. And all Masters of Ships and Vessels in Sea-Service from thirty to fifty Tun is oblig'd to take one such Apprentice, and another for the next fifty Tuns, and one more for every hundred Tun, such Ship or Vessel shall exceed the Burden of a hundred Tuns, under the Penalty of ten Pound. Two Justices are also Impower'd to Hear and Determine all Complaints of hard Usage from these Masters to their Apprentices [a]. Any Poor Souldier or Mariner, who being come from beyond Sea to the place of his Birth cannot get Work there, two Neighbouring Justices, may take order to set him on Work, or Tax the District for his Relief till he find Work [b]. Such as Subsist upon the Relief of the Parish, must Wear upon their right Sleeve a large *Roman P.* with the first Letter of the Parish as a Badge, under pain of losing their Collection, or being Whipp'd, and kept at hard Labour 21 Days in the Correction House as any Justice shall think fit [c]. Two

[a] 2 & 3 *A. c. 6.* [b] 39 *Eliz. c. 17. § 6.* [c] 8 & 9 *W. 3. c. 30. § 2.*

Receipts & Payments Justices *Quorum Unus* shall take an Account from the Church-wardens and Overseers at the Years end of their Intromissions and Behaviour, and for their refusal to accompt and deliver what remains in their Hands to their Successors in Office, may commit them without Bail till they give Satisfaction. The Overseers of the Poor for not Meeting Monthly in the Parish Church on *Sunday* after Sermons, to consider of what is incumbent on them, without a Lawful Excuse allowed by two Justices, or for Negligence in their Office, Forfeit twenty Shillings to the use of the Poor [a]: And for Relieving any Poor wanting a Badge incur the like Penalty, half to the Poor, half to the Informer [b], to be Levied by order of two Justices.

Country 3. By the Law of *Scotland*, for preventing the increase of Idle Beggars, the Liedges may, at sight of Provost [c] and Baillies [d], within Burgh, or of Kirk Sessions either in Burgh, or Landwart, may receive Poor Children under fourteen Years, with Consent of their Parents if alive, and with their own Consent if above that Age, and Educate them either in their Houses or at Callings. And upon a Testimonial thereof from the said Magistrates or Kirk-Sessions these Children shall be astricted to their Masters, their Heirs and Assignies in all manner of Service, and under all kind of Discipline (Life and Torture excepted) until they pass thirty Years of

(a) 43 *Eliz.* c. 2. § 2 & 11. 7 *Jac.* I. cap. 3. § 6. (b) 8 & 9 *W.* 3. c. 30. § 2. (c) The chief Magistrate of a Town or City in *Scotland*, which answers to that of Mayor in *England*. (d) The same with Aldermen in *England*.

Age; shall gain to them, and refound their Damage for Absence. And who detains them from their Masters after Requisition upon twelve Hours, shall be liable in ten Shillings *per Diem*, besides Redelivery [a]. Masters of Manufactories may with Advice of the Magistrates of the Place, seize Vagabonds and Idle Poor Persons, and Employ them in their Work, and exact off the Parishes where they were Born, or if the place of their Nativity be not known, the Parishes where they have haunted three Years before, two Shillings *per Diem* for the first Year after they were apprehended, and one Shilling for the next three Years, half to be payed by the respective Heretors, and half by the Natural Possessors. And the Heretors Liferenters and Wadsetters are to make a Stent Roll for Maintenance of the Poor in the Parishes, who shall be Employed at the Rate foresaid to be paid by themselves and their Tenants proportionally; and in case they fail to make up such a Roll, the Persons or Societies Employing the Poor as said is, may do it. Which Roll shall be renewed Yearly during the foresaid space. Justices of Peace and other Magistrates are ordained to be assisting in the apprehending of these Vagabonds, or in bringing them back to

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Poors Rate*

(a) *Act 10. Par. 22. J. 6.* The Civil Law makes it Theft to conceal a Fugitive Servant, *l. 1. Pr. & § 1. ff. de Fugitivis*. And by our Law such as Hire or entertain Coalliers or Salters without a Testimonial from their last Master, or the Attestation of a Judge concerning the Cause of their coming away are obliged, if Challenged within a Year, to deliver them back within 24 Hours, under the pain of 100 Pounds. *Act 11. Par. 18. J. 6.* And Sir George Mackenzie in his Observations on that Act tells us, That Action has been sustained in the Council against Heretors who had inticed away other Mens Fishers.

their Service after they are once Employed. And such Poor shall not only continue in the Service, and under the Direction and Correction of the Employers during the time the Parish pays for their Maintenance, but also may be retained in the said Service seven Years thereafter for Meat and Cloth only (a). It was ordained that there should be one or more in each Parish settled on the Heretors Expenses to Teach Poor Children, Vagabonds and Idlers to Fine and Mix Wool, Spin Worsted, and knit Stockings (b). Broken Seamen and Souldiers are to have License to Travel from the Judge where they were Shipwrackt or first Landed, to be renewed in every Jurisdiction till the Traveller is arriv'd at his resting place (c). The Oversight of the Poor is committed to the Justices of Peace, who are Impowered to appoint Overseers in every Parish, and take Account of them: As I have Observ'd in the first Part (d). And where the Collections at the Church Door are not sufficient to Intertain the impotent Listed Poor, they are to get a Badge or Ticket for asking Alms at dwelling Houses within their own Parish only (e).

4. By the Law of England, Justices of Peace should appoint Searchers, Watchmen, Keepers and Buriers in places infected with the Plague; and tender an Oath to them for the performance of their Office with Instructions. Which Watchmen may compel infected Persons attempting to go Abroad, to keep their Houses. And 'tis

(a) *Act 16. Sess. 3. Par. 1. Ch. 2.* (b) *Act 42. Sess. 1. Par. 1. Ch. 2.* (c) *Act 74. Par. 6. J. 6.* (d) *Page 15 & 16.* (e) *Act 18. 1ar. 2. Sess. 3. Ch. 2.*

Felony in any Person Infected, or Dwelling in a House Infected, wilfully to go Abroad with an Infectious Sore upon him, after being commanded by a Justice to keep Home. And tho no Sore be found about him, he may be punished as a Vagabond, and bound to the good Behaviour for a Year. Two Justices may Tax Inhabitants for Relief of Infected Persons; and give Warrant for Levying the Taxation by Pounding, or may commit those deficient in Payment without Bail till they give Satisfaction. Upon a Certificate from two Justices that the Inhabitants of the Place are not able to Relieve their Infected Poor, any two Justices near that Place, may Tax for that end the Inhabitants within five Miles thereof. And if there be no Justices in the Place where the Infection is, two Justices of the County may Assess the Inhabitants thereof within Five Miles of the Infected place. Which Taxation Money is to be disposed of, and distributed, as the said respective Justices shall think fit (a).

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distress
monstrum
pounding.*

5. By our Law, Houses were ordained to be closed up in time of Pestilence, and Inhabitants unwilling to be closed up, were to be put out of Towns, to a place assigned them; where they were to be Maintained upon the Towns Charges if unable to Maintain themselves, and not suffered to pass from thence to Infect the adjacent Country. And if any such extruded Towns Folk happen to steal away, the Town should send and bring them back, and punish them for so doing. No Man should Burn (that is Singe for Cleansing) anothers House, except it may be

(a) 17. c. 31, continued by 16 & 17 Car. 1. c. 4.

done without his prejudice (a). And our Justices of Peace are Impowered in General to give Orders in the time of Plague, and to punish Contraveeners severely (b).

(a) *Act 57. Par. 13. J. 2.* (b) *Part 1. page 7.*

S E C T. IV.

The Duty and Powers of Justices of Peace, in so far as concerns the Publick Policy, Security and Government.

THis Section falls Naturally to be divided into what Justices of Peace are to do, 1. For purging the Country of Rogues and Idle Poor Vagabonds. 2. For preserving the Game of Hunting, Fowling and Fishing. 3. For discouraging unlawful Gaming. 4. For Incouraging and Improving Inland Product and Manufactures. 5. For mending and upholding Highways and Bridges; and for regulating Land Carriages. 6. For discovering Falshood. 7. For causing Tradesmen Work, and make sufficient Work, at Reasonable Prices. 8. For causing Masters or their Servants and Apprentices do just things to one another. 9. For securing the Government against the Plots and Machinations of Persons dangerous and disaffected thereto. 10. For Levying Men to Serve in the Queens Fleet, and Land Forces; for accommodating the Souldiery with Necessaries and Conveniencies; and keeping them in good Order. 11. For uplifting Her Majesties Supply, and making it effectual.

collecting

effectual. 12. For Incouraging Inclosing, Planting and Policy : And for preservation of Land and Cattel in Marish and Fenny Counties. 13. For preserving good Order in Inns and Houses where Meat or Drink is Sold, or where Travelers are Lodg'd. 14. About Prisons and Prisoners. 15. About Weights and Measures. 16. About the Customs and Excise. 17. About Trade Buying and Selling. 18. About Nuisances.

I.

For purging the Country of Rogues and poor idle Vagrants.

By the Law of *England*, Riotous, Slothful and Vagabond Poor are to be sent to the Correction-House, to live by hard Labour (a) : and Tinkers and Pedlers are Punishable as Vagrants (b). The most part of the Justices ought to meet in their Respective Divisions twice every Year, for Punishing and Transporting Rogues (c) and Vagabonds (d), and four or five days before ought to send Warrants to Constables, to make privy search for such Persons, to be Sifted before them in order to Punishment, or the sending them to the House of Correction. At which Meeting, Constables shall give account upon Oath, what Rogues they have Apprehended and Punished, and conveyed to the House of Correction : And may be Fined for Negligence in 40 Shillings (e).

(a) *Dalton* ch: 46. (b) 39 *Eliz*: c: 4: § 2. (c) Idle Beggars *qui* *Offiatim* *rogant*. (d) Such as have no settled Habitation, but wander idly through the World. (e) 7 *J*: c: 4.

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Gypsies Two Justices may Adjudge Rogues, Vagabonds and Sturdy Beggars, not being Felons to the Queens Sea-Service (a). 'Tis Fellony for any of those Vagabonds called, or calling themselves *Egyptians*, or others Counterfeiting or Disguising themselves like to them above the age of fourteen, to remain a Month in *England*. And such as bring over or transport there any of that false and subtle Crew, Forfeit 40 pound. But *Egyptians* leaving off their naughty and idle Trade, and betaking themselves to some honest Work or Employment, are allowed to live in *England* (b). A Justice of Peace may commit any idle poor Person to the House of Correction: but cannot order him to be whip'd till once he is convicted (c). One Justice may cause Rogues, Vagabonds and Sturdy-Beggars to be Stript and Whipp'd, and then conveyed from Parish to Parish by the Constables, to the place of their Birth, or last Dwelling, or whence they last came; with a Testimonial under the hand of the Justice, testifieing that the Bearer was Punished, and to go to such a Place, in such a Time. In which Place, they are to be sent to Work in the Correction-house, or in the common Jail, till they be settled in Service for a Year, or in some Alms-House, in case of inability to serve. And who hinder the Punishment or Conveying of Rogues or Sturdy-Beggars, Forfeit five pound *toties quoties*. And are to be bound to the good Behaviour by two Justices *quorum unus* (d). Two

(a) 2 & 3 A. c. 6. (b) 1 Ph. & M. c. 4: 5: Eliz. c. 20. (c) 1 Sid: 281. (d) 39: Eliz. c. 4: §: 3 & 5. 3 Car: 1: c. 4: §: 22: 16: Car: 1: c. 4.

such Justices may commit an incorrigible (a) Rogue to Jail or to the House of Correction, till the next Quarter Sessions (b). A Justice of Peace may Reward any Person for Apprehending Rogues, by granting his Warrant to any Constable of a Parish, thro' which they passed unapprehended, for Payment of two Shilling for every Rogue brought before him (c).

2. By our Law, no Beggar betwixt 14 and 70 particularly Thiggers of Gentle Beggars, should be suffer'd to Beg, unless they have a Token that they cannot Win their own Living, in Landward from the Sheriff, and in Burghs from the Baillics, and such as do otherwise, are liable to be burnt in the Cheek and Banished (d). And none were to be licensed to Beg, except Crooked, or Sick or Impotent Folk (e). Nor is any Beggar to be tolerated to Beg in another Parish, than where he was Born (f). Sheriffs and other Judges may exact Caution from Vagabonds and Unanswerable Men, who for not finding Caution, may be Denounced Fugitives, and may be Pursued with such as Reset them thereafter, till they are apprehended and brought to condign Punishment. And Parties injured by them, will have Action against Magistrates or others, within whose bounds or Jurisdiction these Vagabonds are wittingly Reset with Stolen Goods (g). Vagabonds and strong idle Beggars should be taken and brought before a Justice, or other Judge Ordinary, and by

Country

Security

receive

(a) Incorrigible Rogues are such as appear dangerous to interior sort of People, or will not be Reformed of their Roguishness. 39. *Eliz: c. 4: §: 4.* (b) 39: *Eliz: cap: 4: §: 4.* (c) 13 & 14. *Car: 2: cap: 12. §: 16.* (d) *AB: 25. Par. 1. AB: 42: Per. 2: J: 1:* (e) *AB: 70: Par. 6: J: 4:* (f) *AB: 22: Par: 4: J: 5:* (g) *AB: 97: Par: 11: J: 6.*

them

them be committed to Prison, or the Stocks or Irons without Baill, till try'd by an Assize within six days thereafter. And if Convicted, should be Scourged and burnt thro' the Ear with an hot Iron, except an honest Responsal Man do presently Enact himself before the Judge, to take and keep the Offender in his Service a whole Year ensuing, under the pain of 20 Pound to the Poors use, and at the Years end, to present him to the head Court of the Jurisdiction, or give proof of his Death. If such an Offender against his Masters will desert his Service within the Year, he may when Apprehended be Adjudged to the same Punishment his Master Redeem'd him from. *Juglars, Egyptians, Pretenders to the knowledge of Charming, Propheying, Fortunetelling, Masterless Sangsters or Minstrels, Persons using counterfeit Licences to Beg, Vagrant poor Scholars, and Mariners alleging themselves to have suffer'd Shipwrack without Testimonials, are reckoned, and dealt with as strong Beggars and Vagabonds. And the Resettlers of such are lyable in a Fine to the Poor, not exceeding five Pound. And the Obstructors of Execution against Vagabonds, are to be treated as such. And in every Burgh and Parish Vagabonds are to be Searched for, Received and Conveyed to Prison, Irons or Stocks, upon the common Charge of the Parish (a). Thereafter Egyptians were Banished out of Scotland, never to return; under pain of Death, to be Executed upon them as notorious Thieves after an Assize finds them to be Holden and Repute Egyptians. And*

(a) Act 74: 1st 6: 7: 6:

the Loss of Escheat and Imprisonment during the Judges Pleasure is the Punishment of such as Reset or Supply them. And all Protections and contrary Warrants in favours of these Rogues, are declared null (a). And for farther suppressing idle Beggars and Vagabonds, Correction-Houses were Established in Burghs, where they might be set to Work (b).

I I.

For preserving the Game of Hunting, Fowling, and Fishing.

By the Law of *England*, a Justice of Peace may Conveen before him and Examine Night-Hunters, or Hunters with disguised Faces, and bind them to the good Behaviour (c), may Authorize a Game-keeper appointed by any Lord of a Manor, not under the degree of an Esquire, to search the Houses of the Owners and Keepers of Forests, Chases, or Warrens, & those who have not Heretage to the value of 100 Pound yearly, or Leases of 99 Years, to the value of 150 Pound, not being the Heir Apparent of an Esquire, or one of higher Quality, for Guns, Bows, Gray-hounds, Setting-Dogs, Lurchers or other Dogs, Hays, Trammels or other Nets, Hair-pipes, Snares or other Engines for killing of Hairs or Conies, and to take away or destroy the same. Where a Person enters any Warren, and Chases, Takes or Kills any Conies against the will of the Owner; he may

(a) *Act 13. Parl. 20. J. 6.* (b) *Act 18. Sess. 3. Parl. 2. ch. 2.*
(c) *1 H. 7. c. 7.*

*condemned
to*

by a Justice of Peace be Decerned in treble Damage, and committed for three Months, till he find Surety for his good Behaviour. And the Setter of a Snare or Hair-pipe upon the borders of a Warren, or Killer of Conies there, without leave of the Owner, shall give him satisfaction by the appointment of a Justice, and pay to the Poor what he shall order, not exceeding ten Shillings (a). A Justice of Peace may Decern a Person for Coursing or Hunting any Red or Fallow-Deer, within anothers Inclosure, without consent of the Owner or Keeper, in 20 Pound, tho' none be Taken, Wounded or Killed; And in 30 pound for every Deer, Taken, Wounded or Killed; if Pursued within a Twelve Month, after the Offence. Of which Penalties a third goes to the Informer, a third to the Poor, and a third to the Owner of the Deer. And the Offender not able to pay, must be Imprisoned a Year, and set on the Pillory. And suspected Persons in whose Houses any Venison or Skins of Deer or Toys are found, must shew how they came by them, or submit to the foresaid Penalties for Killing of Deer. Who in the night time do cause pull down or destroy the Pales or Walls of any inclosed Ground, where Red or Fallow-deer are kept, may be Imprison'd for three Months, by a Justice of Peace Warrant (b). Suspected Persons not Qualified to Hunt, Fish or Fowl, in whose Houses any Hare, Partridge, Pheasant, Pigeon, Fish, Fowl, or other Game is found, do Forfeit for every such Hare, Partridge, &c. A

(a) 22 & 23. Car. 2. c. 25. (b) 3 & 4 W. & M. c. 10

Justices of Peace.

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Sum not under Five, nor above twenty Shillings, half to the Informer, and half to the Poor, to be Determined by a Justice of Peace; And in case of insolvency may be sent to the Correction-house for a time, not Exceeding a Month, nor less than ten days. And if any Person not Qualified by Law, do keep or use any Dogs or Instruments, proper for destroying the Game, he is liable to the same Pains and Penalties; unless he evidence his innocence in the Matter. And for preserving the Game of Heath-cocks, who upon any Hill, Moor, Forrest, or Wast, Burn between 2 *February* and 24 *June*, any Grig, Ling, Heath, Furz, Goss, or Fern, are to undergo the severe Discipline of the Correction-house for ten days at least, or a Month at farthest (a). Any Officer who takes or destroys Hares, Conies, Fish, Fowl or other Game, without Licence from the Lord of the Manour, may be Fined by a Justice of Peace in five Pound. And the Chief Officer upon the Place forfeits ten Shillings for the like Offence committed by any Soldier under his command, to be Distributed among the Poor. And such Officers failing to pay within two days after Condemnation and Demand, made by the Constable or Overseer of the Poor, lose their Commissions (b). Who Hawk or kill any Partridge or Pheasant betwixt the first of *July*, and the last of *August*, may by two Justices within six Months of the Offence, be Committed for a whole Month without Bail; unless the Offender pay to the Poors use 40 Shilling, for every such Hawking,

(a) 4 & 5 W. & M. c. 23. (b) 4 & 5 W. & M. c. 13. § 30. 2 & 3 c. 20. § 30. 3 & 4 A. c. 16. § 31. 4 & 5 A. c. 11.

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and 20 Shilling for every Partridge or Pheasant so taken or Destroyed (a). Who take Pheasants or Partridges in anothers Ground without licence, Forfeits ten Pound, one Moiety to the Prosecuter, t'other to the owner of the Ground (b). Who Shoot at, or Kill any Pheasant, Partridge, House-dove, Hearn, Mallard, Duck, Teal, Wodgeon &c. Or take or Destroy any of them with Setting-Dogs, Nets or Engines, or break the nest of Pheasant, Partridge or Swan, or keep any Setting-Dog; except he have ten Pound of real Rent in Heretage, or 30 Pound Yearly in Lifereit, or Goods to the value of 200 Pound, or be the Son of a Knight, or the Apparant Heir of an Esquire, or of some higher degree may by order of two Justices be committed three Months without Bail; unless they pay immediately to the Church-wardens, 20 Shilling for every Fowl, and forty Shilling for every Setting-Dog or Net. And any who Sells or Buys to Sell again, Deer, Hares, Partridges or Pheasants, not brought up in Houses, or come from beyond Sea, shall Forfeit for every Deer 40 Shilling, for every Hare, and every Partridge ten Shilling, and for every Pheasant 20 Shilling, half to the Poor, and half to the Prosecuter (c).

By the Law of *England*, every Justice is a Conservator of Rivers, and should burn Nets and Engines, put into the Water to destroy the fry of Fish, and for the second Fault Imprison during a Quarter of a Year, and for the third Offence, for a whole Year; and augment the Punishment as Offences increase (d). The Setting up new

(a) 7 J. c. 11. § 2. & 4. (b) 11 H. 7. c. 17. (c) 1 Jac. c. 27. (d) 13 Ed. 1. c. 47. 13 R. 2. c. 19. 17. R. 2. c. 9.

Weirs within five Miles of the mouth of any Haven or Creik, or destroying the Spawn of Sea-fish thereby, or by any other Device, is Fineable in ten Pound, half to the Sovereign, and half to the Pursuer; and Fishers with any Draw-net under three Inches Mesh in such a Place, except for taking of Herrings, Pilchards, and Sprats in North-folk only, or Fishers with any Net made with Canvass, or other Device for destroying the Brood, Forfeit the net and ten Shillings, half to the Poor, and half to the Pursuer, to be Levied by a Constable upon the Warrant of a Justice of Peace (a). A Person for taking Fish any manner of way in anothers Water or Pond, without the Owners consent, may by a Justice of Peace be Decerned in Damages to the Party Injured, not Exceeding the Treble, and to pay to the Overseers for the Poor, any Sum within ten Shillings; and for Insolvency, may be committed to the House of Correction for a Month: unless he give Surety to the Person Injured, never to offend again in that Sort, under a Penalty not exceeding ten Pound. Besides the Justice may Cut and Destroy the Offenders Nets and Fishing Engines, wherewith he is Apprehended (b). Any Person may by Warrant of a Justice of Peace Search and Seize, for their own use, Engines for taking of Fish, in the Houses of those Prohibited and suspected to have them (c).

(a) 17 c. 12. (b) 22 & 23. Car. 2. c. 25. § 7 & seq. (c) 4 & 5. W. & M. cap. 23. § 5.

3. By the Law of Scotland, the present Rules for preserving the Game are set down in the *Act* 20. *Par.* 7. Ratified by the *Act* 15. *Sess.* 7. *Par.* W. and Ordained to be put to full and vigorous Execution by Masters of the Game, Justices of Peace, and other Judges Ordinary. Of which Rules, and their Foundation Laws, I shall give a summary Account.

No Man should Ride or go Hunting or Hawking in his Neighbours Corns from *Pasch* till they be Shorn, nor in Wheat at any time of the Year: Nor should Range other Mens Inclosures, under the pain of Damages to the Party, and ten Pound for the first, twenty Pound for the second, and Escheat of Moveables for the third Fault (a). Such as Shoot with Guns or Bows at Dae, Rae, Hynd, Hare, Cunning, Dove, Heron, or Fowl of River, incur Escheat of their Moveables, half to the Sovereigns Use, half to the Judge or Apprehender of the Delinquent. And if the Offender is a Vagabond having no Goods, he is to be punished by forty Days Imprisonment for the first, and cutting off his right Hand for the second Fault (b). And the Judge Ordinary failing in Execution thereof, is Fineable in a hundred Pound for the first Fault, to be doubled for each after failzie. And he may Exact the like Penalty off Heretors or Possessors Refusing, when Required, to present to him the Contraveener Living upon their Ground (c). Thereafter these Penal Sanctions were Ratified with this Addition, That the Slaying and Shooting of Hart, Hind, Dae

Rabbit

failures

(a) *Act* 51. *Par.* 6. 2. M. (b) *Act* 16. *Par.* 1. 7. 6. (c) *Act* 12. *Par.* 7. 7. 6.

Rae, Hares, Conies, and other Beasts without the Owners Licence or Allowance, should be punished as Theft (a). The Keepers of the Queens Forrests are Discharged to permit the Pasturing of Beasts therein, under the pain of Losing their Offices, and Confiscation of their Moveables. And others found (b) putting in their Beasts to Pasture there, are to be Imprisoned, and the Beasts Escheat, two parts to the Queens Use, and a third to the Keeper (c). Such as Shoot, Hunt or Hawk within six Miles of the Queens Woods, Parks, Castles or Palaces without Licence from the Masters of the Game, are liable in a hundred Pound Fine, half to Her Majesty, half to the Informer (d). Beasts found in the Hained Woods or Forrests (e) of privat Men [f] are Escheat *forfeited* to the Owner and Keeper of the Forrest [g]. And Keepers of privat Mens Forrests, may apprehend such as Travel with Guns or Dogs therein, and carry them to the nearest Justice of Peace or other Judge Ordinary, to Answer according to Law. All required to concur to apprehend these Offenders, should give ready Obedience according to the Forrest Laws [h]: And those who conceal them are Fineable as Art and Part [i] *prostatary*

(a) *AB* 59. *Par.* 11. *J.* 6. (b) Hence it seems that Cattel only found in Her Majesties Forrest, are not *ipse jure* Escheat. Since they might have strayed there without the Owners Knowledge. *Mackenzie* Observ. on the *AB* 12. *Par.* 4. *J.* 5. and the *AB* 128. *Par.* 22. *J.* 6. Which allows to Intruder summarily with Cattel found in the Queens Forrest, seems to respect only fenced Forrests, which Beasts cannot stray into, without putting in. (c) *d.* *AB* 12. (d) *AB* 210. *Par.* 14. *J.* 6. *Junct.* *AB* 20. *Par.* *J.* 7. (e) This holds only in private Forrests notourly known to be such. *Mackenzie* *ibid.* (f) Who are Infeet *cum Libera Foresta*. (g) *d.* *AB* 12. (h) *Cap.* 15 & 22. (i) *AB* 20. *Par.* *J.* 7.

Teal, the -
Such & Yake
**as bird -*
something
of the Heath
kind.
Burning of
Heath

The slaying Muirfowl, Heathfowl, Partridge, Quail, Duck, or Mallard, Tale or Atale, or Tornichan between the first of Lent and the first of July, except Waterfowl with Hawks in Dredging time; is Fineable in fourty Shillings [a]. Muirfowl, Pouts, are not to be Killed before the first of July, Heath Pouts before the first of August, nor Quail before the first of September [b]. Muirburn after the last of March, is forbidden under the pain of fourty Shilling to the Sovereign. And Masters are liable for all upon their Ground (c). None but Heretors of 1000 Pound of valued Rent, having licence from Masters of the Game, are allowed to have or use Setting Dogs, under pain of 500 Merks *tories quoties*. And Common Fowlers, not being Domestick Servants to such Heretors, making use of such Dogs or Fowling Pieces, Escheat their Dogs or Guns, and are liable to six Weeks Imprisonment (d).

forfeit

4. Our Law-givers have Wisely Provided for preserving the Breed of Fishes, as well as the Game of Hunting and Hawking. No Cruiver or Zairs are to be set in fresh Water where the Tide flows, as destructive to the Fry of Fishes. Nor are they allowed in any other fresh Water without express Infestment. And then each Heck should be three Inches wide, and the

(a) *AB* 109, Par. 7 *J.* 1. *juncl.* *AB* 20. Par. 7. 7. (b) *AB* 11. Par. 16 *J.* 6. *juncl.* d. *AB* 20. (c) *AB* 48, Par. 4. *J.* 4. *juncl.* d. *AB* 20. By the former whereof, both the Servant that makes Muirburn, and the Master Commanding it, are liable to the legal Penalty. Because tho a Masters Order in small Offences might be a ground of Pardon or Mitigation of punishment to him who is under necessity to obey. *l.* 157. *pr.* *l.* 167. § 1. *l.* 169. *pr.* *ff.* de *Re Juris*. It doth not excuse for atrocious Crimes. *l.* 20. *ff.* de *Off. & Action*. (d) d. *AB* 20.

Saturday's Slop (a) observed under the pain of five Pounds (b). And all Persons are discharged to set Vessels, Creels, Weirs, Nets or any other Engine to hinder Smolts from going to the Sea (c). Cowpes, Masses, Nets, Prins, set on Waters that have Course to the Sea, are to be destroyed; And the Upholders of them, and Millers that slays Smolts or Trouts with Creels or any other Engine, are liable as destroyers of Red-fishes (d). The steeping of Lint in Rivers, Lochs or Burnas where Fishes are, is discharged under the pain of fourty Shilling, and Confiscation of the Lint *toties quoties* (e). The Slayers of Salmond, or such as are Art and Part therein, from the Feast of the Assumption (f), till that of St. Andrew (g), were once made liable for the first Fault to pay fourty Shilling, for the second four Pound, and for the third they losed their Offices [h]. The destroyers of Red-fish in forbidden time, are Fineable in ten Pound for the first Fault, twenty Pound for the second, and Forfeit their Life for the third [i]. But now the slaying of Salmond in forbidden time, or of Kipper, Smolts, or such Black-fish at any time, is punishable as Theft, according to the Committers Rank and Estate [k]. And the Contraveener of any of the foresaid Acts against the Killers of Kipper, or Black-fish, or

forbid

anyway

(a) Which is the pulling up the Hecks the breadth of an Ell in every Cruive from Saturday at six a Clock, till Monday at Sun-rising. (b) AB 11, Par. 1 J. 1. AB 74, Par. 10. J. 3. AB 111, Par. 7. J. 6. (c) AB 86, Par. 14. J. 2. (d) AB 38, Par. 5. J. 3. (e) AB 13, Par. 18. J. 6. (f) 15 August. (g) 30 November. (h) AB 35, Par. 2. J. 1. jun. AB 8, Par. 5. J. 2. (i) AB 72, Par. 6. J. 4. (k) AB 11, Par. 16. AB 5, Par. 18, J. 6. Yet such Offenders were never pursued Capitally, but use to come off with an Arbitrary Punishment.

Destroyers of the Fry or Smolts of Salmond, not being able to pay the Pecuniary Fines due by Law; may be Corporally Punished, or Banished, or delivered over as a Recruit to Her Majesties Service, as the Judge before whom he was Convict shall think fit, and the half of the Fines go to the Informer. A constant Slop is ordained to be made in the Midstream of each Milndam Dike, and where the Dike is settled in several Grains of the River, a Slop is to be in each Grain (except where Cruives are): Providing it prejudice not the Going of Milns. And all Fishing at such Miln-Dam-Dikes with Nets Stented, or other Engines, is discharged under the pains inflicted against Killers of Black-fish, and Destroyers of the Fry of Salmond (a). All Fishing with Pock-Nets, Herry-Water-Nets, or other Engines not allowed by Law within the Water of Forth above the Pow of Alloway, to the prejudice of Salmond-fishing, discharged under the pain of a Fine not exceeding twenty Pound, or Imprisonment *toies quoyes* (b).

III.

For Discouraging Unlawful Gaming.

By the Law of England, a Justice of Peace may Commit to Prison, without Bail, Apprentices or Servants found Playing at Tables, Dice, Cards, or other Unlawful Games out of *Christ-mas*, or then out of their Masters House or Presence, till they give Bond not to do the like again;

(a) *AB* 33. *Sess.* 6. *Par. W.* (b) *AB* 33. *Sess.* 7. *Par. W.*

and Fine them in twenty Shillings. And may enter any House suspected of unlawful Gaming there, and Imprison the Keepers until they find Surety not to keep up any longer such a House of Play. And may inflict the Penalty of fourty Shillings on the House-keeper *per Diem*, and 10 *sh.* 8 *d.* on the Players every time (a).

2. With us Playing at Cards or Dice within any Inn or Ale-house, is discharged under the pain of fourty Pound, to be Exacted from the Inn or Ale-house Keeper for the first fault, and loss of their Liberty for the next [b]. And all such Playing even in private Houses is Unlawful, except where the Master of the Family Plays. And what is Gained at such Play within twenty four Hours, or by Wagers at Horse Races above the Sum of a hundred Merks, should be Consigned in the Hand of the Collector for the Poor. And Magistrates of Burghs, Sheriffs and Justices of Peace in the Country are Impowered to pursue for the same. And for Neglect or Refusal, are liable in the double; half to the Informer, half to the Poor (c). But tho our Law Condemn Horse Races as the occasion of much Idleness and Expense; and also Reprobates Wagers concerning the Death of the Prince, or the Event of some National Undertaking: It doth not disallow other Innocent Wagers.

forbidden

forbids.

(a) 33 Hen. 8. c. 9. § 11, 12, 14, & 16. (b) Constitutionibus Principum prohibentur popinæ, in quibus alea luditur, compositionibus exhauriuntur pecuniæ, & ad libidinem sternitur via. Nam sepe vini dulcedine illecti, & inescati artifices, & mechanici, non tantum politicæ leges transgrediuntur, sed & rem domesticam obliviscuntur & una atque altera hora in popina Consumunt, quod tota hebdomada in Officina summo Labore sunt Lucrati, *Periz. in Codic. Lib. 11, Tit. 16. N. 11, (c) Ad 14. Pav. 23. J. 6.*

For Incouraging and Improving Inland Product, and Manufactures.

By the Law of England, no Person can be Buried in any thing but plain Woollen Cloath or Stuff, under pain of five Pound ; half to the Poor, half to the Informer ; to be Levied out of the Goods and Chattels of the Party Deceased, by Warrant of a Justice of Peace, or other Magistrat. And Failzeing thereof out of the Goods of the Person whose House the Defunct died in, or who had a hand in Burying him otherwise. And for Discovering and Prosecuting such Offences ; within eight days after each Burial, Affidavit made before a Justice of Peace, or other Magistrat, that the Defunct was Buried in Woollen, is to be Reported to the Minister. Who, if no such Affidavit is brought to him, is further with to intimate the same to the Church Warden, or Overseers of the Poor : And they within eight days of getting notice, shall apply for a Warrant to Levy the Forfeiture. And the Minister, Church-wardens or Overseers of the Poor, Justice of Peace or other Magistrat negligent therein, are Fineable in five Pound, to be Pur-sued within six Months after the Offence ; whereof one Fourth Part goes to the Sovereign, another to the Informer, and two Fourths to the Poor (a).

(a) 30. Car. 2. cap. 3.

2. By our Law, the Penalty of Burying in any other thing than Woollen-Cloath, is 300 Pound for a Nobleman, 200 Pound for others, and the Maker or Sower of the Dead-Cloaths Forfeits fourty Merks: to be Pursued at the instance of an Elder or Deacon of the Parish, & to be applyed to the Poores use. And for Rendring the Design more Effectuall, an Elder or Deacon with a Neighbour or two are to be called to see the Corps Coffin'd: and a Certificate upon Oath, concerning the manner of Burying Subscribed by them, is to be Reported to the Minister within eight days of the Interment, by the Friends of the Defunct Present, and having the charge of the Burial, under the pains foresaid (a).

3. But tho' the *English* Law be Calculated very much for encouraging Inland Product. All Justices of Peace, Mayors, Bailiffs, Constables in *England*, upon Information that Tobacco is Sown within their Precincts (except in Physick-Gardens) should cause it to be destroyed, and who resist the Execution thereof, Forfeit five Pound; and are to suffer two Months Imprisonment without Bail, and to enter into Recognizance of ten pound with two Sureties, not to do so again (b). The Reason of this Sanction is, partly, because *English* Tobacco is not so Good and Wholsome; partly for that the Planting it in *England* would mightily sink the Crown-Revenue, by paring off that Branch on't arising from Customs upon Imported Tobacco; partly because the Strength and Wellfare of

(a) *Act* 14 *Sess.* 4. 2 *Act* *junct.* *Act* 16. *Sess.* 2. *Car.* 7. 7. *Act* 35. *Sess.* 5. *Par.* *W. & M.* (b) 12 *Car.* 2. c. 34. 15 *Car.* 2. c. 7 § 15

South-Britain, doth greatly depend upon the *American Plantations*, which Employ much of its Shipping and Seamen, give vent to vast Quantities of its Native Commodities and Manufactures, and Supplies it at easie Rates, with several Valuable Commodities. And of several of these *Plantations*, Tobacco is a main Product, to which their Wellfare and Subsistence is owing.

4. With us, a new Imposition upon Tobacco, as the most superfluous Imported Commodity, was granted in *anno 1671*, to be Employed for Payment of some Publick Debts. But that Imposition being found grievous and uneasy to the Generality of People that Smoked Tobacco, It was Discharged in *December 1673* (a).

forbids
5. For inciting People to improve our own Manufacturable Commodities, our Law Discharges made Work to be Imported, under the pain of Confiscation, half to the Sovereign, half to the Apprehender or Pursuer (b). Allows Materials useful for Manufactories to be Imported free of Custom, Excise and other Publick Dues (c).

(a) *Act 4 Sess: 4: Par: 2. Ch. 2.* (b) *Act 47: Sess: 1. Par. 1. ch. 2.* But this Act is not so well observed: upon this pretence, that some Work cannot be so well made here; and our own Tradesmen would extortion us, if we be not in a Capacity to overaw them by bringing Home made Work. However the high Custom laid upon Foreign made Work, with the Sea Risk in bringing it home, and Exchange paid for the Price; are sufficient encouragements to our own Tradesmen, to prevent such Import by Working cheaper. Especially considering that they can live Cheaper than those Abroad. (c) *Act 40. Sess: 1: Par. 1. ch. 2.*

V.

For Mending and Upholding High-ways and Bridges.

By the Law of *England*, two or more Justices of Peace are to hold a special Sessions Yearly, on the third of *January*, or on the fourth, where the former falls to be a Sunday, or within fifteen days after, for receiving from Constables, Church-wardens, & Surveyers of the Highways, a List of the most sufficient Inhabitants, in the several Parishes within their District, after giving ten days previous Advertisement to the said Constables, &c. of the holding of such a Sessions: And for naming Surveyers of the High-ways of such Parishes. Which Nomination within six days shall be intimated by the Constables, Church-wardens, or Surveyers for the time, to the Persons named, who for Refusing or Neglecting to accept the Office, Forfeit five Pound. And in such a case, the Justices are Impowered to appoint some other fit Persons to be Surveyers, who shall upon the like notice, take upon them the Office, under the same Penalty. Who lay in any High-way, not twenty Foot broad, any Stone, Timber, Straw, Dung or other Matter, whereby the same may be obstructed, are Fineable in five Shilling: And the Possessors of the adjacent Lands, shall Remove and Dispose thereof for their own use. And if they fail to clear the same, or clean their adjoining Ditches, Gutters and Drains, or to carry away the Earth taken out of these, and neglect to lay sufficient Trunks or Bridges, where Cart-ways lead into the said Grounds, for the space of
ten

ten days after getting notice from any Surveyer; they shall Forfeit five Shillings *toties quoties*. Heretors must, under the same Penalty, cut down any Tree, Bush or Shrub Growing upon such a narrow High-way in their Ground, within the like space after such Intimation. And Possessors of Lands adjoining to such High-ways, must keep their Hedges prun'd right up from the Roots. Surveyors within 14 days after their Acceptance of the Office, and so from time to time every four Months, are to view the Roads, Water-courses, Bridges, Causeys, and Pavements, within the Districts under their inspection (a), and acquaint some Justice of Peace upon Oath, with the condition thereof; or incur the Penalty of not accepting the Office; unless they have some reasonable excuse allowed by two Justices of Peace. And must intimate what defects they observe the next *Sunday* after Sermon in the Parish Church: and may amend them, if not amended within 30 days after: and will be Reimbursed of the Charges and Expences, by those who should have done it; to be modified by a Justice of Peace. Justices of Peace should once in 4 Months hold special Sessions, and Summon all Surveyors of High-ways to attend there, and receive their Instructions; and to give account upon Oath of the State of the High-ways, under their Inspection, & what Offences or Neglects any are guilty of. And no Surveyor can be Discharged of his Office, till at some such special Sessions, he give up an Account upon Oath how he dis-

(a) *J. E.* Such as particular Lands are not solely liable to Repair.

posed of all Money that came to his Hands for Repairing Ways. And what free Money is found to be in such an ones Hand, must be delivered to the Succeeding Surveyor, under the pain of double the Value. Surveyors may make and keep open new Ditches and Drains, thro' Lands Adjacent, where those already made are not sufficient to carry off the Water. Two Justices may at their special Sessions give Warrant to Reimburse Surveyors of what Money of their own they were forc'd to Expend in Repairing High-ways, by imposing an equal Rate upon the Inhabitants, according to the Method Prescribed in the 43^{Eliz.} Intituled, *An Act for the better Relief of the Poor.* And if any Fine, Penalty or Forfeiture Imposed on a Parish or Place, for not Repairing the High-ways, shall be Levied from one or more of the Inhabitants; Any two Justices of Peace upon Complaint thereof made to them at the special Sessions, may Impose a Rate upon the rest of of the Inhabitants in manner foresaid for Relief of these Distress'd, to be Levied and Paid by the Surveyors within a Month. Surveyors should make every Cart Way leading to a Market Town eight Foot wide at least, and as Even and Level as may be. And no Horse Causey should be under three Foot in breadth [a]. Surveyors for each Neglect of their Duty enjoyned by the 3 & 4 W. & M. c. 12. Forfeit forty Shillings, and every Justice of Peace for Omission or Refusal to do what the said Statute requires of them, incur the Penalty of five Pound. And all Fines and

(a) 3 & 4 W. & M. c. 12.

ten days after getting notice from any Surveyor; they shall Forfeit five Shillings *toties quoties*. Heretofore must, under the same Penalty, cut down any Tree, Bush or Shrub Growing upon such a narrow High-way in their Ground, within the like space after such Intimation. And Possessors of Lands adjoining to such High-ways, must keep their Hedges pruned right up from the Roots. Surveyors within 14 days after their Acceptance of the Office, and so from time to time every four Months, are to view the Roads, Water-courses, Bridges, Causeys, and Pavements, within the Districts under their inspection (a), and acquaint some Justice of Peace upon Oath, with the condition thereof; or incur the Penalty of not accepting the Office; unless they have some reasonable excuse allowed by two Justices of Peace. And must intimate what defects they observe the next *Sunday* after Sermon in the Parish Church: and may amend them, if not amended within 30 days after: and will be Reimbursed of the Charges and Expences, by those who should have done it; to be modified by a Justice of Peace. Justices of Peace should once in 4 Months hold special Sessions, and Summon all Surveyors of High-ways to attend there, and receive their Instructions; and to give account upon Oath of the State of the High-ways, under their Inspection, & what Offences or Neglects any are guilty of. And no Surveyor can be Discharged of his Office, till at some such special Sessions, he give up an Account upon Oath how he dis-

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(a) 3 & 4 W. & M. c. 12.

Forfeitures therein mentioned are to be Levied by Distress and Sale of the Delinquents Goods, upon a Warrant from two Justices of Peace. The one half of which Fines and Forfeitures goes to the Informer, and the other to the Repairing of the Highways of the respective Parishes [*a*]. Surveyors of the Highways are to Appoint (having respect to the Season of the Year and Weather) six Days for providing Materials towards the Repairing decay'd Highways. And to give publick Notice a convenient time before to all Persons liable to Work ; and must give account of Deficients to a Justice of Peace, to be laid by him before the next Quarter Sessions [*b*]. Or he may Fine the Offenders in 1 *sh.* 6 *d.* for want of a Day Labourer, in 3 *sh.* for want of Man and Horse, and in 10 *sh.* for a Cart with two Men every Day of their Absence (*c*). Every Possessor of a Plow-Land, is obliged to send on each of the six Days appointed, a Cart and two able Men, each Housholder, Cottager and Labourer (not being a Servant Hired by the Year) shall by himself or another Work every Day eight Hours. If there appear more Carriages than needful, the Surveyor may require two able Men in place of every Carriage spared [*d*]. In places where Carts are not used, the Inhabitants shall send Horses with able Persons [*e*]. All Charitable Gifts for the Repairing of Highways, Pavements and Causeys, and Fines, Penalties and Forfeitures Incurred or Inflicted by virtue of standing Acts concerning them (if the Disposal

(*a*) *Ibid.* (*b*) 22 *Car.* 2. cap. 12. § 12. (*c*) *Ibid.* § 9. (*d*) 2 & 3 *Phil. & Mar.* c. 8. (*e*) 22 *Car.* 2. c. 12.

is not otherways expresly Determined) to be Employed on the Highways by Warrant of two Justices [*a*]. A Surveyor may cause any Water Course to be turned into any Ground or Ditch adjoining to the Highways. And may carry away Rubbish or broken Stones out of any Quarry, or gather Stones upon any Ground within the Parish, towards the mending of the Highways: And may Dig for, or take Sand or Gravel out of the Ground adjoining to the Highways, not being a Garden, Orchard or Meadow: So be, he dig but one Pit not above ten Yards over, and fill the same again within a Month at the Charge of the Parish [*b*]. If there be not sufficient Materials in the same Parish, for Repairing the Highways, the Surveyor may, by Allowance of two Justices of Peace, dig and take Materials out of the Common of a Neighbouring Parish, or upon the Sea Coast. And if there be not Materials there, may take them out of any Mans Ground in manner prescribed by the 5 *Eliz.* c. 13. § 3 & 4. Opposers of the Execution of Laws concerning Highways and Bridges, shall pay fourty Shillings within seven Days after Convicted, or be committed by a Justice of Peace till they pay. *Jure Communi*, The whole Shire is liable to Repair any Bridge or Highway within the same [*c*]: Unless where some are bound to Repair by the Tenor of their Land [*d*], or by taking Toll of such as pass that way [*e*]. If the decayed Way or Bridge ly partly within two

(*a*) 14 *Car* 2: c: 6: § 12. (*b*) 5 *Eliz.* c: 13: § 3, 4, & 6.
(*c*) 3 *Co.* 33. (*d*) *Rolls Abr.* 368. (*e*) 13 *Co.* 33. *Quia sentit*
Communis.

Precincts, the Inhabitants of each must Contribute proportionably to the Repair. And a Highway not lying within any particular Parish, ought to be Repaired upon the Common Expence of the Shire. Stones and Materials for Repairing Highways and Bridges, may be laid upon the Contiguous Lands.

2. Having Treated in the first Part (*a*) of what our Law Provides for the Making, Repairing, and Maintaining Highways, and Bridges : I hope it will not offend my Reader, that, to avoid a nauseous Repetition, I leave him to be Satisfied in these particulars, by a retrospect.

3. By the Law of *England*, for Regulating Land Carriages; If any Cart or Waggon, Carriage, other than such as are Employed in Husbandry, or carrying Hay, Straw, Unthresh'd Corn, Coal, Chalk, Timber for Shipping, Materials for Building, Stones of all sorts, Ammunition or Artillery for the Sovereigns Service, go with above five Horses or Oxen at length : The Owner shall Forfeit fourty Shillings, to be Levied by Warrant of any Justice, whereof the Surveyor gets one third, the Poor another, and the Informer a third (*b*). Common Waggoners exacting higher Prices for the Land Carriage of Goods, than those Established by the Justices at their Quarter Sessions, Forfeit five Pound for every such Offence; to be Levied by Distress and Sale of Goods to the use of the Party Grieved, upon the Warrant of two Justices (*c*).

(*a*) Pages 5, 18, 19, 20, 21. (*b*) 22 *Car. 2. c. 12. § 6 & 7.*
 (*c*) 3 & 4 *W. & M. c. 12. § 24.*

4. By an Act of the Parliament of *Great Britain* (A), Waggon, Carts or Carriages, should only be Drawn with six Horses or other Beasts, except up Hills; under the pain of five Pound for every Offence, half to the Surveyor of Highways where it was committed, and half to the Discoverer and Prosecutor, if an Inhabitant of the Place; to be Levied by Distress of the Horses or other Beasts, by Warrant of a Justice of Peace, which may be Appraised and Sold after three Days for Payment of the Fine: And the Owner gets the Superplus of the Price after Deduction of the Charges of keeping, and Expenses of the Sale. The Surveyor Neglecting to put this to Execution, Forfeits five Pound, to be Levied and Applied in manner foresaid.

V I.

For Discovering Falshood.

By the Law of *England* for hindering the Current Coin to be Diminished by Clipping and Melting the same; It is Lawful for any two Justices of Peace without the Bills of Mortality, to enter into the House or Work Shop of a Person suspected Guilty of Buying or Selling unlawful Bullion, to search for the same; and in case of Opposition, they may, with Concurrence of a Constable, break open Doors, Boxes, Trunks, Chests, Cup-boards, or Cabinets, and seize any such unlawful Bullion found. And the Possessor, if he clear not by his Oath, or otherways, that the

(A) 6 A. C. 29.

Bullion found was not before the Melting thereof Current Coin, nor Clippings thereof, may be committed to Prison by the Justices for six Months without Bail (a).

Forbidden 2. By our Law, the Breaking or Melting down Silver or Gold, is discharged under the pain of Confiscation of half of the Moveables of the Owner and Melter for the first Fault, and of their whole Moveables for the second. And the Melter not being Responsal, is to be punished in his Person at the Discretion of the Justice (b).

3. Another kind of Falshood which Justices of Peace are to prevent and check, is the using of false Weight and Measure; which is afterwards spoke to in the fifteenth Division of this same Section (c).

VII.

For causing Tradesmen Work, and make sufficient Work, at reasonable Prices.

By the Law of *England*, two Justices of Peace in the Country, and the Chief Officer in Towns and Cities, with the Concourse of one or more Justices in the Shires, may Yearly once or oftner appoint some Overseers of Cloth: to Seal all Woollen-Cloth before it be sold, and to search for unsufficient Cloth, or Cloth Marked with false Seals. The Refuser to be an Overseer forfeits five pound, half to the Queen, and half to the Justices or other Judge who named him an

(a) 6 & 7 W.3. c.17. § 8. (b) Act 17. Par.1. f.6. (c) § 15.

Overseer. A Justice, Constable, or Overseer, may enter into any Place, to search for Tenters, Ropes, Rings, Heads, Wrinches or other Ingines for Straining Cloth; And for the first Offence, may deface and render them ufeless, and for the Second may Sell them, whereof the Price shall be applied to the Poors use, by advice of two Justices of Peace. And the Offender besides doth Forfeit 40 Shillings. And if any Justice of Peace do not within seven days after Information given to him of Ingines for stretching Cloth in a Place within the limits of his Commission, Repair thither, and do his Duty against the Offender: he Forfeits five Pound to be judged by the Justices of Assize (a). A Justice may fine the makers of deceitful Malt to Sell, and the minglers of Good with Evil Malt in two Shilling for every quarter of such Malt: And may cause the same be Sold under the common Market Price (b). Persons making Malt, or Buysings Barley to make it, tho' prohibited by the Sessions so to do, may by two Justices be committed for three days without Bail, and longer till they enter into Recognizance of 40 pound, to obey the order of the Sessions (c). One Justice finding a Person to have used Logwood in dying, may bind him over with Sureties to the Quarter Sessions (d). And two may cause Logwood to be burnt where they apprehend it (e). Any one Justice of Peace may Judge

(a) 39 *Eliz. c. 20. 2.* *J. c. 18.* (b) 2 *Edw. 6. c. 10. § 1.* (c) 39 *Eliz. c. 16. § 1.* (d) 39 *Eliz. cap. 11. § 2.* (e) 23. *Eliz. cap. 9. § 2.*

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Offences Committed in Tyle-making, viz. If Tyles be not well made, or of not well prepared Earth, or of an undue Size (*a*).

2. By the Law of *Scotland*, Draw'n Cloth within Burgh was declared Escheat, half to the Sovereign, half to the Burgh: And the Drawer for the first fault, to lose his Freedom for Year and Day, and for the second, for ever. An able Man was to be appointed for Trying and Sealing Cloth, who for Sealing insufficient Cloth lost his Freedom, and was Punishable in his Person and Goods (*b*). Malt-makers were ordained to present their Malt to the Market, but to Sell none of it till nine hours, under the pain of Escheat of the Malt. And to take only a Boll of Bear, for making the Chalder of Malt, under the pain of Oppression (*c*): And to take but two Shillings more for the Boll of Malt, than the Boll of Bear is sold for, under the pain of Oppression and Confiscation of the Malt (*d*). No Litster is allowed to be a Draper, or to buy Cloth to Sell again, under the pain of Escheat (*e*): For the same reason that all Craftsmen are Discharged to use Merchandise (*f*); viz. lest they should be thereby diverted from prosecuting their proper Imployment. A qualified Man was to be chosen for Trying and Sealing sufficient Colours (*g*). I know no Sanction we have about Tyle-making.

3. Tradesmen in *Scotland* are also under the Inspection and Influence of Deacons. For

(*a*) 15 *Fdw.* 4. c. 4. (*b*) Act 112. Par. 7. *J.* 7. (*c*) Act 92. Par. 6. *J.* 4. (*d*) Act 29. Par. 4. *J.* 5. (*e*) Act 66: Par. 14: *J.* 2. (*f*) Act 12. Par. 2. *J.* 3. (*g*) Act 112. Par. 7. *J.* 5

hinderings

Dyer.

hindering the Lieges to be Cheated and Imposed on by insufficient Work, in the Year 1424, Each Craft was appointed to chuse with consent of the Officiar of the Town, a wise Man out of their number to be Deacon, or Masterman, for Essayng all Work (a). Which Deacons in two Years time were Discharg'd, as tending to Sedition (b): And Wardens chosen by the Council of the Burgh, set up in their Room; who with Assistants Examined and Priz'd the Matter and Workmanship of each Craft, and Punished Offenders. Which, in Shires, Barons were ordained to do within their Respective Barronies (c). Wardens, so called *quasi Guar-*
dians, were Succeeded in Office by *Visitors* of Crafts, chosen Yearly by the Provost, Baillies and Council (d). But about the time of the Reformation, Queen *Mary* to support the tottering Popish Party, by getting all Tradesmen to side with them, Restored Deacons by a special Gift, and a Letter to the Council of *Edinburgh*. Since which time every private Trade, Except Maltmen (e) have Enjoyed the privilege of Deaconry (f).

(a) Act 39. Par. 2. §. 1. (b) Act 86. Par. 6. *Idem*. (c) Act 103. Par. 7. *Idem*. (d) Act 5. Par. 6. *Q. Mary*. (e) *Vid.* Part 1. Pag. 6. (f) *Collegia opificum* were Discharg'd and Restrain'd in *France* and *Spain*, *Percz. in Cod. Lib. 11. Tit. 10. N. 3.* And their *Ju-*
dex or *Decanus* (whom we call Deacon) was limited so, as he could only cognosce concerning Work and Value thereof. For he was not competent to judge those of his Incorporation, in the matter of any other Contract, Business or Crime, *Ibid. N. 19.*

For causing Masters, or their Servants, and Apprentices, do just things to one another.

By the Law of England, a Justice of Peace may cause Persons fit for Labour, Work by the Day in the time of Hay or Harvest, or commit them to the Stocks for two Days and a Night (a). And may license by a Testimonial, such as cannot find Work in the County where they dwell, to go to serve in another (b). And every Person betwixt the Age of twelve and sixty Years, not particularly exce^md, may be compelled to Serve in Husbandry by the Year (c). A Master cannot put away his Servant, except of consent before the Term, without a Rational Excuse (d) sustained by a Justice of Peace; nor yet after the Term, without a Quarters warning given before two Witnesses. And if a Servant leave his Master against his will, between Terms, without an allowed Excuse (e); or after the Term, without a Quarters Warning: Two Justices may commit him without Bail, till he find Surety to Serve out his time (f); or by virtue of 7 *Ja. c. 4.* One Justice may send him to the House of Correction, to be punished as an idle and disorderly Person (g). Every Tradesman unmarried, or Married Tradesmen under thirty Years, may be compelled to Serve in his Art, unless he have 40 Shilling in Land-Rent, or ten Pounds worth

(a) 5 *Eliz c. 4. § 22.* (b) *Ibid. § 23.* (c) *Ibid. § 7.* (d) A Servant cannot be put away before his Term, or his Wages abated, upon account of Sickness. *Dalt. c. 36.* (e) A Masters withholding Wages, Meat or Drink from a Servant, is a sufficient cause to desert his Service. *Fitz 11. b. 168.* (f) 5 *Eliz c. 4. § 9.* (g) *Dalt Ibid.* And a Servants refusal to Work, is a Departure in the Construction of Law.

of Goods, allowed of by two Justices; or be exercised in some other Lawful Service, or in Labouring some Farm of Tillage (*a*). Two Justices may Imprison without Bail a Master ten, and a Servant twenty days, for giving or taking Directly or Indirectly, more than the set Wages: And farther may inflict a Fine of five Pound upon the Master offending herein (*b*). And any Bond or Promise of Excessive Wages, is void and null (*c*). They may also commit for a Year, or less, such Servants as Assault their Master, Mistress or Overseer. And may compell any unmarried Woman, between twelve and fourty Years of Age, fit for and out of Service, to Serve, or commit her for Refusing (*d*). May fine Masters retaining such as are out of Service, and have no Testimonial of their Lawful Departure, in five Pound, to be recovered in Sessions. And Servants who cannot get a Testimonial, or who are taken with a Counterfeit one, may be used as Vagabonds (*e*). The 5. *Eliz. c. 4. §. 24. & seqq.* determines what Persons the Justices may oblige to Serve as Apprentices (*f*), and to whom, and how long. A Justice of Peace may decide differences betwixt Masters and their Apprentices: And for not conformity in the Master, may bind him over to the next Sessions. May commit an Apprentice for Stealing from his Master above the value of twelve Pence, with his Accomplices to Prison: And for Theft under

(*a*) 5 *Eliz. c. 4. §. 4.* (*b*) *Ibid. §. 18.* (*c*) *Ibid. §. 20.* (*d*) *Ibid. §. 21 & 24.* (*e*) *Ibid. §. 11.* (*f*) An Apprentice is one who by Contract of Indenture is bound to serve some Years a Man of Trade, for insight therein.

that value, such may be sent to the House of Correction (a). The Justices of every County dividing themselves into several Limits, are to inquire twice a Year into the Offences of Masters, Servants, Apprentices, and Artificers, and punish the same. And each Justice of Peace gets five Shilling *per diem*, not exceeding three days, out of the Fines and Forfeitures, for his Pains and Attendance (b). If any Servant or Apprentice depart unlawfully from his Master into another Shire, two Justices of Peace may grant Warrant to the Sheriff, or other head Officer of the Place, to commit the Refugee, till he find Surety to serve out his time (c). One of the two Justices who are authorized to judge betwixt Masters, and their Servants or Apprentices, must be of the *Quorum* (d). Clothiers convicted before two Justices of Peace, of not giving Wages to their Servants, conform to the Rate imposed by the Quarter-Sessions, Forfeit ten Shilling to the Party grieved, to be Levied by Distress and Sale of Goods (e). Clothiers Servants Imbeziling any of their Masters Wool or Yarn, and the Receiver or Buyer thereof, knowing the same to be Imbeziled, may be decerned by two Justices of Peace, to make up the Masters Loss and Damage, or in case of Insolvency, may be ordered to be Whipped, or set in the Stocks for the first Fault: and for the second Fault, shall undergo the like, or further Punishment, as the said Justices shall think fit (f).

adjudged

(a) *Dalt.* 36. (b) 5 *Eliz* c. 4. § 37, 38. (c) *Ibid.* § 47. (d) *Ibid.* § 39. (e) 1. *Jac.* 6. § 7. (f) 7. *J.c.* 7.

2. With us, Poor Labourers of the Ground being driven to great Straits and Difficulty by reason of Servants refusing either to be Hired for ordinary Wages, or for longer time than from *Martimass* to *Whitsunday*; at which Term they used to throw themselves loose upon Prospect of extraordinary Gain, by Casting and Winning Peats, Turf, Fewel, Divots, Building of Fold Dikes, Shearing in Harvest: It was Statute, That a Servant Hired from *Martimass* to *Whitsunday*, might be detained by his Master, or compelled by a Justice of Peace to stay with him for the same Hire from *Whitsunday* to *Martimass*; unless the Servant can verifie to the Justice of Peace, or Constable of the Bounds, that he is Hired to another Master. And a Justice of Peace may compell a Fugitive Servant to return to his Master; and all loose Men and Women to Serve for competent Hire (a).

Whitsunday according to Law of Holland is fixed to 15. of May
Martimass is 11th day of Nov.

I X.

For Securing the Government against the Plots and Machinations of Persons Dangerous and Dissaffected thereto.

It hath been the Care of the Legislators both here, and in South Britain, ever since the Reformation got the Ascendant in the Isle, to Purge and Root out of it all Dregs of Popery; and to Secure against its getting up again among us. And Papists being considered as Persons most dangerous to a Protestant Government, their

(a) *Act 21. Par. 23. 7. 6.*

Loyalty is tryed by the Test of publick Oaths; their Power is abridg'd by many Penal Statutes; and by being debarr'd from Offices of Trust, and Preferment in the State, and other legal Discouragements.

2. By the Law of *England*, Two Justices *Quorum Unus* may require any Popish Recusant 18 Years old, not being a Peer, to take the Oath of Allegiance; and for Refusing the same, or to Answer upon Oath, may commit him without Bail to the next Quarter Sessions [a]. But a *Feme Convert* under the degree of a Baroness convict of Recusancy, and not Conforming within three Months, may be committed by them till she Conform, or her Husband pay ten Pound a Month to the Sovereign, or the third Part of his Heritage during her not Conformity (b). Two Justices may at any time Search the Houses of Recusants convict; or of those who have such Wives, for Popish Books or Relicks, and deface or burn them; unless they be of great Value, which are to be laid before the Quarter Sessions (c). Who first discovers to a Justice of Peace, any Person intertaining a Jesuit or Popish Priest, or the saying of Mass, or such as were present thereat within three Days, shall upon the Offenders Conviction, not only have Immunity for himself, if Guilty, but also a third of the Forfeiture if it exceed not 150 Pound, and if above, shall have 50 Pound (d). Two or more Justices may Authorize any Person with a Constable, to search for and seize to Her Majesties Use, Arms, Powder or Ammunition, and

(a) 3 J. c. 4. § 13 & 14. (b) 7 J. c. 6. § 28. (c) 3 J. c. 5. § 26. (d) *Ibid.* § 1.

Horses above the value of five Pound, belonging to Papists refusing to Subscribe the Declaration in the Statute 30 Car. 2. S. 2. C. 1. And such as conceal the same, or hinder the Search and Seizure, shall be committed for three Months without Bail, and pay treble the value of the Horse or Arms concealed or searched for; to be Apprised by the Justices at the next Sessions. But the Popish Recusant may evite these Forfeitures by Subscribing the said Declaration at the General Sessions (a). A Person to whom any *Agnus Dei*, Crosses, Pictures, Beads, Consecrated by the Popes Authority are offered, must apprehend the Offerer, and within three Days bring him, or disclose his place of Abode to the next Justice of Peace, who within fourteen Days must signify the same to the Privy Council; and the receiver of any such Popish Trinkets offered, must within a days space deliver them up to the next Justice of Peace under the pain of a *Premunire* (b). A Justice of Peace may also inquire after those who obtain Bulls and Absolutions from Rome, or Publish the same, or give or take Absolutions by virtue thereof; such as withdraw any Subject from the Establish'd, to the *Romish* Religion; and the Procurers, Maintainers and Concealers of such Offenders; and must Certifie the same to the Privy Council within fourteen Days after such Offences came to their Knowledge, under

(a) 1 W & M. c. 15. (b) 13 Eliz. c. 2. Some will have *Premunire* to Import Strength given to the Crown against Foreign Usurpation: Others think that *Premunire* was Barbarously turn'd into *Premunire* by the rude Interpreters of the Canon Law. The Penalty of *Premunire* is lots of the Sovereigns Protection, and Forfeiture of Heretage and Moveables, 16 R. 2, c. 5.

the pain of *Premunire* (a). Those who desire to know the other legal Checks and Discouragements of Popery by the Law of England, may find them in 29 *Eliz. c. 6.* 35 *Eliz. c. 2.* 1 *J. c. 4.* 3 *J. c. 4.* & 5. 1 *W. & M. c. 15.* 11 & 12 *W. 3. c. 4.*

3. Our Law fearing the pains taken by the *Romish* Church to imbroil us, more than any Danger from other Hereticks, hath us'd exemplary Severity towards the Devoto's and Agents of *Rome*. Going to *Rome*; or making Applications to the Pope for getting Benefices in *Scotland*, is Interpreted *Barratry* with us, and punished by Banishment and Infamy (b). The using Superstitious Popish Rites is a ground to Fine a Landed Man in 100 Pound, an Unlanded Man in 100 Merks, the Yeoman in 40 Pound, and to Imprison insolvent Offenders for the first Fault, and to punish all Offenders by Death as Idolaters for the second Fault (c). Wilful hearers of Mass and concealers of the same are liable to the pain of Death, and their Goods to be Escheat (d). Jesuits, Priests and Trafficking Papists were ordained to flee the Kingdom under the pain of Death (e). And for Resetting them, an Earl may be Fined in 1000 Pound, a Lord in 1000 Merks, a Baron in 500 Pound, a Freeholder in 300 Merks, a Yeoman in 40 Pound, and a Burgeiss as the Council should Modify, not exceeding 100 Pound (f). Papists are not allowed to have the Education of their own Children,

*Lodging
or receiving*

(a) *Ibid.* & 23 *Eliz. c. 1.* (b) *Act 107. Par. 7. J. 1. Act 2. Par. 1. J. 6.* (c) *Act 104. Par. J. 6.* (d) *Act 193. Par. 14. J. 6.* (e) *Act 8. Par. 1. Sess. 1. Ch. 2.* (f) *Act 18. Par. 16. J. 6.*

nor to be Tutors or Curators to the Children of others (a): Nor can they prejudge their Protestant Heirs, by any gratuitous Deed (b). Who perverts a Protestant Subject to Popery, is to be proceeded against as a Trafficking Papist; a Protestant Servant turning *Roman Catholick* in a Popish Family, is punishable as an Apostate; and the Master when required, obliged to put him away never more to be received by him or any other Popish Master, under the pain of 100 Pounds. Popish Masters must allow their Protestant Servants free Liberty to attend Divine Worship and Catechising, under the foresaid Penalty: And these Servants for not using the same are to be Banished the Parish (c). But the Growth of Popery, the Resorting and Resetting of Popish Missionaries, is more particularly obviated by the *Act 3. Sess. 9. Par. W.* where a Reward of 500 Merks is proposed to such as Seize them or their Resetters; Papists are rendred incapable to receive Dispositions made to them, or to Succeed as Heirs to their Predecessors; Deeds in favours of Cloysters or other Popish Societies, are Void, and accresce to the Granters next Protestant Relation; No Adjudication can expire in the Person of a Papist; A Protestant Apostatizing to Popery Forfeits his Estate to his next Protestant Heir; No suspect Papist may Teach any Science, Art or Exercise; Nor may a Protestant have a Popish Domestick Servant under the pain of 500 Merks.

(a) *d. Act 8.* (b) *Act 26. Sess. 5. Par. W.* (c) *Act 28. Sess. 6. Ibid.*

4. Yea, by the Treaty of Union (*a*), all Papists or Persons Marrying Papists, are excluded and incapable to Inherit or Injoy the Crown of *Great Britain*, and the pertinent Dominions, or any Part thereof; which, as if these were Naturally Dead, descends to the next Protestant Heir, according to the Provision of the Descent of the Crown of *England* made in the first Year of the Reign of King *William* and Queen *Mary*.

5. Protestant Dissenters, are another Set of Men on whom the *English* Government had once a very jealous Eye. But now the Severity they lay under, is slackened and taken off by a Toleration, and the benefit of occasional conformity. Yet at the same time Justices of Peace in *England*, are impowered to keep Dissenters there in good order. In so far as, any Justice of Peace may Administer the Oaths of the Government to them, and for refusal, commit them to Prison without Bail, and Report to the next Quarter-Sessions, the Names of the Refusers (*b*). And therefore our Justices of Peace, in consequence of the late Communication of Powers to them, seem to have Authority to do the like with Dissenters, from the present Establishment of the Church of *Scotland*, for maintaining the Peace and Security thereof. And it is expressly provided by our Law (*c*), That when the Keys of Vacant Churches, are refused to be given up to the Presbytry or Persons having their order; then the next Magistrate, Sheriff, Lord, and Baillie of Regality and their Deputs, or any Justice of

(*a*) Art. 2. (*b*) 1. W. & M. cap. 18. (*c*) Act 2. Sess. 7. Par. W.

Peace, ought, if required by the Presbytry, or any from them, to make the Church-doors patent, put new Locks thereon, and deliver the Keys to the Requirer, under the pain of 100 Pound for the Poors use, by and attour the Presbytrys Expences.

over and above.

6. By the Law of England, who Publish by Writing, Speech or Deed, any Phantastical or false Prophesy, to occasion Rebellion or Disturbance in the Nation, may by a Justice of Peace be Fined in ten Pound, and Imprisoned a Year without Bail for the first Offence; and Forfeits all his Goods, and may be Imprisoned during Life for the second. Which Forfeitures are to be Divided betwixt Her Majesty and the Prosecutor (a). Any Justice of Peace may commit to Prison, or bind over with Sureties to the Quarter Sessions, such as maintain the taking of an Oath in any case to be unlawful, or refuse to take an Oath imposed by the Government, or perswade others to Refuse it (b).

7. It was Inacted by the British Parliament (c), That who by Preaching, Teaching, or unadvised Speaking, Impugn Her Majesties Right to the Crown, or assert the Pretended Prince of Wales's Right, or quarrel the Parliaments Power of Limiting the Succession to the Crown, being Inform'd against upon Oath, within three days before a Justice of Peace, and Prosecuted within three Months after the Information, shall incur the Penalty of *Præmunire*. And two Justices *quorum unus*, are Impowered to Summon before

(a) 5 Eliz. c. 15. (b) 15 & 14 Car. 2 c. 1. § 4. (c) 6. A. 14. 7.

them Persons within their Limits, whom they suspect to be Dangerous or Disaffected to the Government, and tender to them the Abjuration Oath (a).

X.

For Levying Men to Serve in the Queens Fleet, and Land-forces; for accomodating the Souldiery, with Necessaries and Conveniencies, and keeping them in good order.

By the Law of Great-Britain (b), Two Justices of a County, or the Mayor or head-Officer of a City or Town, together with one or more Justices thereof, and for want of a Justice there, with one or more Justices of the County (not having any Military Office, except in the Militia) are Authoriz'd to Levy Able-bodied idle Men, to Serve as Soldiers in Her Majesties Land and Marine Forces. May Fine Constables for wilfully neglecting to Execute their Order for Seizing such Persons in five Pound, half to the Informer, half to the Poor. And are to order such Recruits, to be delivered to the Respective Officers of the Forces upon their Receipt of the Men. The Officers shall out of the Levy-money, pay twenty Shillings to every new raised Man they Receive, and the like Sum to every Constable or other Person Employed in raising him, to be ascertained by the said Justices and Magistrates: besides six pence for every Day the

(a) *Ibid.* c. 14. (b) 6 A. s. 10.

Constable, or other Parish Officer keep the new Souldier in Custody. In presence of these Justices, the 14 and 23 Articles of War against Mutiny and Deserters, are to be Read to the new Recruits; and the Officer appointed to Receive them, is to get a Certificate thereof, and of their names, under the hands of the Justices, or other Magistrates. From which time those Recruits are understood to be Listed Soldiers, subject to the Discipline of War, and excem'd from Civil, but not from Criminal Processes. These Justices may Fine in five Pound or under, such as resist the Searching for, Taking and Securing Persons Qualified to be Recruits, or commit them for a Month without Bail, in case of Insolvency. But one Justice presuming to Levy any Man, and deliver him over to any Officer, Forfeits 100 Pound to the Party grieved. Persons wrongously delivered over as Souldiers by the Justices, ought to be Discharged upon a Certificate thereof, to the Secretary of War, from any two of these Justices, and the Parties Repaying what Levy-Money he Received, and what farther was expended upon the account of his being Listed, not exceeding 20 Shilling. Harvest Labourers having a Certificate from the Minister, and Church-wardens, or Elders of the Parish where they live, allowed by two Justices, are Excem'd from being press'd to be Soldiers, between the first of June and the 25 of September 1708. *exempted.*

2. By the Law of England, such as shall, or offer themselves to be falsly Mustered, may be committed to the House of Correction for ten Days,

by the next Justice of Peace, and taken as a Listed Soldier. And the Lender of Horses to be Mustered, Forfeit the Horses, if belonging to the Lender, or twenty Pound if they belong to another, to be tried before such a Justice of Peace (a). Any Military Officer convicted before two Justices of Peace, of taking upon him to Quarter Soldiers upon Private Houses, or to Quarter Women or Children in any House, against the Owners consent, or offering Threats or Violence to any Mayor, Constable, or other Civil Officer, to determine them in their Duty of Quarters and Billeting Soldiers; shall be *ipso facto* Cashiered. If a Constable do so Quarter Women, he Forfeits 20 Shilling, upon Proof thereof before the next Justice of Peace (b).

3. By our Law, false Musters and free Quarters, are fully provided against by severe Penalties. And where any Officer or Soldier makes not due Payment of what he takes on, or commits any Abuse in his Quarters, The Landlord may by Witnesses, or his own Oath, instruct before a Justice of Peace, or a Commissioner of Excise or Assessment, or the next Neighbouring Heretor, what is owing to him, or what Damage he sustains by these Quartered on him; and get a Declaration of the Value from the said Justice of Peace &c. Which is a sufficient Warrant to the Collector of the Shire, to give allowance thereof to the Landlord, or if he be a Tenant to his Master for his behoof, out of his Cels or Excise. All Pressing and Seizing Horses,

(a) 2 & 3. A. c. 20. (b) 3 & 4. A. c. 16. 4 & 5. A. c. 11.

by any Officer or Soldier for their own private use, is Discharged under the Penalty of a Months Pay, to be retained off the Officer who commands (a). Officers are Discharged to exact Lodging, Coal and Candle for themselves, their Wives and Children gratis, under the pain of breaking; and Soldiers for their Wives and Children, under the pain of the Damage to be paid by their Officers at the sight of the Judge Ordinary, who in case of Failzie, forfeit three Months pay, to be applyed for the Parties Reparation &c. (b).

4. By the Law of Britain [c], a Justice of Peace should send Deserters to the Jail, and acquaint the Secretary of War therewith, that the Defender may be proceeded against according to Law.

5. By the Law of England, upon Her Majesty or Prince George's Order, any Justice of Peace may Issue out Warrants to Constables next to Souldiers in their March, for providing Carriages to them, upon the Officers paying to the Constable eight Pence per Mile for a Wagon with five Horses, or Wain with six Oxen, or four Oxen and two Horses, and six Pence per Mile for a Cart with four Horses, and so proportionably for lesser Carriages. But a Military Officer forcing any Cart or Carriage so provided, to Travel more than one days Journey, or not Discharging the same in due time for their return Home, or suffering his Soldiers and Servants not Sick or

(a) Act 4. Sess. 4. Par. W. & M. (b) Act 33. Sess. 5. Act 23. Sess. 6. Par. W. (c) 6. A. c. 10.

Wounded, or Women to Ride in the Waggon or Wain, or forcing any Constable by Menaces to provide Saddle Horses, or forcing Horses from the Owners; Forfeit five Pound *toties quoties*, the Offence being proven before two Justices, who are to Certify the same to the Pay-Master. And he to give the Money to their Order out of the Delinquents Pay [*a*].

6. By our Law, there should be paid for each Day, that Horses Employed for carrying Artillery, Ammunition or Provilion, or other use of the Army, shall Travel, three Shilling every two Miles to a Man and Horse; and each Day they don't Travel six Shilling to Man, and as much for the Horse, to be paid by Magistrates of the Burgh, if Horses be taken within a Town, or by the Collector of Supply in the Shire, if taken in the Country; who are to be repaid or get Allowance thereof from the General Receiver. Magistrates within Burgh, Commissioners of Supply, and Justices of Peace in Landwart, are Required to provide from time to time a competent Number of Horses within their respective Bounds, for the Service of Her Majesties Forces. And Officers or Souldiers are not to Press Horses without their Concourse, or to detain them longer than a days March at farthest, and to Restore them back in good Case; under the pain of a Months Pay, besides the price of the Horse to the Furnisher, as shall be Instructed before the Baillics in Burgh, Justices of Peace, Sheriffs, Stewarts, &c. in the Country [*b*].

(*a*) 3 & 4 A. C. 16. 4 & 5 A. C. 11. (*b*) AB 4. Sess. 4. Par. W. & M.

7. By the Law of Britain, two Justices of Peace may Fine in a Sum not exceeding fourty, nor under ten Shillings to the Poors use, Constables neglecting to Execute Justices of Peace Warrants directed to them for providing Carriages to Her Majesties Forces in their Marches, or any other Person Resisting or Frustrating the Execution thereof, to be Levied by Distress and Sale of Goods [a].

X I.

For Uplifting the Supply Royal, and making it *Collecting*
Effectual.

Persons in England, Wales, and Berwick upon Tweed, Taxable for the Queens Supply by the 6 A. c. 1. in respect of their Personal Estate, being Convict before two Commissioners of Supply, or a Justice of Peace of the County within a Year of making the Tax-Roll, of having escaped the Taxation by changing their Place of Residence to Scotland, Ireland, Jersey or Guernsey, where Personal Estates are not Assessed, or by any other Fraud or Covin (b); and a Certificate thereof made to Exchequer by the said Commissioners or Justice of Peace: Shall be liable in treble the value of the Proportion of the Supply that could have been Charged on them by the said Statute.

2. By the Ninth Article of the Union, when the Sum of 1997763 Pounds, 8 Shillings and 4

(a) 6 A. c. 20. (b) A Collusive Compact betwixt two or more to the prejudice of a third Person.

Pence half Penny is Ordained by the Parliament of *Great Britain* to be Raised in *England*, on Land or other things usually Charged in Acts of Parliament there for granting an Aid to the Crown by a Land-Tax: *Scotland* is to be Charged with a further Sum of 48000 Pound free of all Charges as their *Quota*; and so proportionably for any greater or lesser Sum Raised in *England* by any Tax on Land or other things usually Charged therewith.

XII.

For Incouraging, Inclosing Planting and Policy; and for Preservation of Land and Cattle in Marsh and Fenny Counties.

Having in the Class of real Injuries committed by Fraud against ones Property [a], Discouraged already of the Incouragement Men have to Plant and make Policy, from the care that both the *Scots* and *Englisk* Law-givers have taken to preserve Planting and Policy; by Inflicting of Penalties and Punishments on such as destroy and spoil or wrong the same: It remains only to shew what other Incitement our Law gives to Planters and Makers of Policy.

2. Where any Person intends to Inclose his Lands by Dike or Ditch, and the Marches are crooked and unequal, or unfit for Dike or Ditch; he may require the Sheriff, Justices of Peace or other Judge Ordinary to Visit and Regulate the Marches, by Adjudging pieces *hinc inde* with

(a) Page 30, 31, 32.

the least prejudice to either Party, and ordaining any Superplus Price that happens for adjusting to be paid, that such a Dike or Ditch be there- after the Common March (a). For the In- couragement of Heretors, Wadsetters and Life- renters, to Inclose and Plant their Ground, they were allowed, at the sight of the Justice of Peace or other Judge Ordinary, to cast about the High- ways to their Conveniency, not exceeding 200 Ells on their whole Ground. And where In- closures fall to be made on Marches, the next Heretor undergoes half of the Charges (b). Nay, farther to promote Planting and Policy, Lands belonging to several Heretors lying Run-~~ning~~ ^{intermixed} (except Burrow Acres) may be divided at the instance of any of the Parties, on Citation of ^{one with} all having Interest, by the Justice of Peace or ^{another.} other Judge Ordinary; who are to have special regard, that the Division be Commodious to the Mansion Houses of the respective Heretors (c). And the Lords of Session may, upon Summons for dividing Commonitys not belonging to the Queen, or to Royal Burrows in Burgage, grant Commissions to Justices of Peace or other Judges Ordinary, for Perambulating the Ground, and taking all necessary Probation: And upon their Report may Value and Divide (d).

3. In England, Commissioners of Sewers (e) are usually appointed under the Great Seal, to see

(a) A¹⁷ 17. Sess. 1. Par. 2. Ch. 2. A³⁹ 39. Sess. 1. Par. 7. 7.

(b) Ibid. & A⁴¹ 41. Sess. 1. Par. 1. Ch. 2. (c) A²³ 23. Sess. 5 Par. W. (d) A³⁸ 38. Ibid. (e) Sewer *Quasi* Issuer, from the French Issue, signifying a Passage, Gutter or Drain to convey Water into the Sea or a River. In Holland they have Wind-Mills for Draining Water,

Passages, Drains and Ditches well scoured and kept open, for the Preservation of Lands and Cattle in Marish and Fenny Counties. The Authority of which Commissioners, with the Form of their Commission and Oath, is to be seen in the 23 *Hen. 8. c. 5. junct. 3 & 4 Ed. 6. c. 8.* and six Justices *Quorum Duo*, in the Shires where any Laws of Sewers are to be Executed, may Execute the same for one Year after expiring of the Commission of Sewers; unless a new Commission be published in the *interim* (a).

XIII.

For preserving good Order in Inns where Meat and Drink are Sold, or where Travellers are Lodg'd.

In England, for preventing Disorders in Ale-houses and Tipling-houses, none are allowed to keep them (b), except at Fairs, without a Licence from the Sessions whereof one is of the *Quorum*. Which Justices must take Bond and Surety by Recognizance from the Persons to be Licensed, that good Order shall be observed, and no unlawful Games used within their House: And must Certify the same to the next Quarter Sessions, under the pain of five Merks. For which Write the Granter pays but twelve pence. And as they are Impowered to Erect, so they are Impowered to Suppress Ale-houses at their Discretion (c). Every Unlicensed common Seller of Ale or Beer, Cyder, or Perry, Forfeits twenty Shillings, to

(a) 13 *Eliz. c. 9.* (b) Inn keepers are comprehended under Ale-house Keepers, *Dalt. c. 7.* (c) 5 & 6 *Ed. 6. c. 25,*

be Levied by Distress or Attachment of Goods upon the Warrant of a Justice of Peace, by the Constables or Church-wardens of the Parish where the Offence is committed for the Use of the Poor. If there be no sufficient Distress or Goods to seize, two Justices may deliver the Offender to the Constable to be Whip'd; and may Commit the Constable for his Disobedience herein, till he punish the Offender, or pay forty Shillings to the Poores use. Unlicensed Ale-house Keepers are to be committed for the second Fault to the House of Correction during a Month; and for every posterior Offence are to ly there till set at Liberty by the Quarter Sessions (a). And Brewers Forfeits 6 lh. 8. d. for each Barrel of Ale they deliver to them (b). Retailers of Brandy, or other Distilled Liquors must be Licensed as well as Ale-house Keepers (c). The keeping of an Ale-house, Tavern, &c. by Serjeants (d), Bailiffs or other Ministers of Justice is to be Suppress'd as Mischievous (e).

(a) 3 Car. 1. c. 3. (b) 4 J. c. 4. (c) 12 & 13 W. c. 11. § 18.
 (d) There are several kinds of Serjeants in England. But those here spoke of are Serjeants at Arms, *Servientes ad Arma*, and Serjeants of the Mace *Servientes ad Clavam*. The former's Office is to attend the Person of the Sovereign, to Arrest Traitors or Persons of Quality; and they are restricted by Statute to the Number of 30. Two of them by the Queens Allowance attend the two Houses of Parliament. Whose Office in the House of Commons is to keep the Doors, and Execute the Orders of the House in apprehending Offenders. One of these Serjeants attends on the Lord Chancellor in the Chancery, another upon the Lord Treasurer, one waits upon the Lord Mayor of London upon Solemn Occasions, one upon the Lord President of Wales, and another upon the Lord President of the North. There is a Troop of the Inferior kind of Serjeants of the Mace, that attend the Mayor and other Head Officer in Corporate Towns, chiefly for the matter of Justice.
 (e) Dalt. c. 7.

2, In the Year 1424, Hostellaries with Stables, and Chambers, and Provision to Man and Horse at a reasonable Rate, were ordained to be set up in Scotland (a). And for their Incouragement, all Travellers were appointed to Lodge in Hostellaries, unless they led Money with them; In which case they might Lodge with their Friends. And none but the Common Hostellaries were allowed to receive Travellers under the pain of 40 Shilling to the Sovereign (b). Magistrates of Burrows and Barons were appointed to see to the Provision of these Hostellaries, and to Regulate their Prices (c).

3. Common Inn-holders or Ale-house Keepers may be compelled by a Justice of Peace to Lodge and Intertain a Traveller for ready Money; but no otherways (d). Because, Albeit they are free at first to keep a publick House or not as they think fit (e); yet after they take up such an Employment, *Repellere non possunt iter agentes*, they are obliged to Receive and Accommodate Strangers (f).

XIV.

About Prisons and Prisoners.

By the Law of England, An Offender committed by a Justice of Peace, refusing, tho able, to defray the Charges of Guarding him to Pri-

(a) *Al* 24. Par. 1. *Al* 85. Par. 6. *Ja*. 1. (b) *Al* 56. Par. 3. *J*. 1. (c) *Al* 18. Par. 4. *J*. 5. (d) *Dalt*. c. 7. *Hales*. p. c. 146. *Dyer* 158. *Co. R.* 9. 276. (e) *l. i.* § 1. ff. *Nautæ, caupones, &c.* *Bruneman. Comment. in Pandect. lib. 4. tit. 9. n. 1.* (f) *l. i.* § ult. ff. *furti. Adversus Nautas Caupones, &c.*

son, The Justice may grant Warrant to a Constable, where the Prisoner has any Goods within the County, to apprise by four Inhabitants of the Place, so much thereof, as will satisfy the said Charges, and sell the same. And where a Prisoner has no Goods or Gear to defray these Charges, a Taxation for that end must be made on the Parish where he was Apprehended, and allowed by a Justice of Peace, who may grant Warrant to poind such as are Deficient in Payment of their Proportions (a). The next Justice of Peace or their Quarter-Sessions, may determine what is fit to be taken for each Nights Lodging, or other Expences by any Under-Sheriff, Bailiff, Serjeant, while any Person is under Arrest in his custody, and not yet carried to Prison. And Persons Arrested are not to be carried to Taverns or Ale-houses without their consent (b). Three Justices *quorum unus* may settle the Fees to be paid by any Person for his Commitment, Discharge and Chamber-rent. And all Justices should use their endeavours to find out and make effectual Legacies and Gifts to poor Prisoners for Debt; And Sign an Account thereof, and the Rates of Fees, and the Government of Prisons, to be recorded by the Clerk of the Peace, and hung up in a Table in every Jail (c). The Keeper of Jail may, by consent of three Justices *quorum unus*, upon Emergent occasions provide other safe Places for Removal of sick Persons in his custody (d). None are to

make distraint on such

(a) 3 J. c. 10. (b) 22 & 23 Car. 2. c. 20. § 9. (c) *Ibid.* § 10, 11, 12. (d) 19. Car. 2. c. 4. § 2.

be Imprisoned by any Justice of Peace, but in the common Gaol (a): to the end they may have their Trial at the next Gaol delivery, or Sessions of the Peace (b).

2. I shall only add to what is said in the first Part (c), concerning what our Law provides, in Relation to Prisons and Prisoners: That if any Prisoner for a civil Debt or Cause, make Faith before the Magistrate of the Burgh, that he is not able to Aliment himself; the same is to be intimated to those that detain him, That they may provide and give surety for an Aliment to him, not under three Shilling *per diem*, or consent to his Liberty, which if refused the Prisoner may be safely set free within ten days (d).

X V:

About Weights and Measures.

To have different Weights to Buy and Sell with, is Abominable in the sight of GOD (e).

2. Brass Standarts of all Weights and Measures are kept in the Exchequer at *Westminster*, by an Officer of the Queens Household, called Clerk or Comptroller of the Market: From the Pattern whereof such Standarts are also set up in the Principal Town of every Shire, and kept there by the Clerk of the Market: conform to which

(a) 5 H. 4: c. 10. (b) Coke Inst. part 2: Magna Charta c. 26: (c) page 7 & 8. (d) Act 32 Sess. 6: Par. W. (e) Deuteron: c. 25. v. 13.

every other City, Burrow and Market Town, provide for themselves common Weights and Measures Marked and Sealed by him, who may burn such as are unjust. The Magistrates of any City wanting a Clerk of the Market, are to cause Seal Weights and Measures.

3. Scing by the Union-Treaty, the *English* Weights and measures are to be used here, and Standarts thereof are come down to be set up in, and kept by the Burghs who had the keeping of our old Standarts (a): I shall give a short account of them.

4. By the 25 Chapter of *Magna Charta*, Weights and Measures are ordained to be the same all over *England*: But yet there are two kind of Weights there; The one called *Troy Weight*, or *Libra Trojana*, and the other *Averdupois* or *Libra Civilis*, from the *French Avoirdupois* to have full Weight.

5. In *Troy Weight* 32 natural Grains of Wheat Corns in the midst of the Ear, or 24 Artificial Grains Weigh a Penny Weight *Sterling*, 20 Penny Weight make an Ounce; 12 Ounces a Pound. Hereby Gold, Silver, Pearl, Precious Stones, Silk, Bread and Grain are Welghed. Apothecaries and Gold-smiths use this Pound, Ounce and Grain: But differ in their intermediate divisions. In so far as among Apothecaries 20 Grains Gr. make a Scruple, three Scruples 1 Drachm, 8 Drachms 1 Ounce, 12 Ounces a Pound, Goldsmiths Reckon 24 Gr. make a Penny Weight, 20 Penny Weight 1 Ounce, 12 Ounces 1 Pound.

(a) *Vid.* Appendix to the 1 Part.

6. In *Averdupois* Weight, 16 Drachms go to an Ounce; 16 Ounces to a Pound; 7 Pound of Wool, 8 Pound of *Essex* Cheese and Butter are allowed to the Clove or half Stone; 14 Pound of Wool, Beef in the Country, Iron and Shot, 13 Pound; of Cinamon, Allum, Sugar, Pepper, Nutmegs, 20 Pound of Hemp, 8 Pound of Beef at *London* and Wax make a Stone; two Stones a Quarter or Tod; 4 Quarters a Hundred, and 20 Hundred a Tun, of all things but Lead, whereof only 19 Hundred and a half goes to the Tun or Fodder; 182 Pound or 13 Stone, or 6 Tod; of Wool, 256 Pound of *Essex* Cheese and Butter, and 336 Pound or 42 Cloves in *Suffolk* go to a Wey; 26 Stone of Wool or 2 Weys, to a Sack; and 12 Sacks to a Last. By *Averdupois* Weight, Grocery Ware, Drugs (a) Butter, Cheese, Flesh, Wax, Pitch, Tar, Tallow, Wool, Hemp, Flax, Hops, Iron, Steel, (b) Lead, and all things whereof there is Refuse, are Weighed. In consideration whereof 112 Pound *Averdupois* is allowed for a Hundred Weight.

7. The Ounce *Troy* is almost a twelfth Part heavier than the Ounce *Averdupois*: 51 of the former being equal to 56 of the Latter. But the *Troy* Pound is lighter than the *Averdupois*, whereof 14 doth Weigh 17 of the other.

8. Measures are either Applicative or Receptive. The former are divided into long and square Measures, the least Measure of length is

(a) The Apothecaries buy their Drugs according to *Averdupois* Weight, they make up their Medicines by the *Troy* Weight, which is therefore called *Libra Medica*. (b) A Faggot of Steel is 120 Pounds, a Burden of Steel is 180 Pounds.

Barley Corn, whereof three from end to end, or four in thickness make an Inch or Fingers Breadth; four Inches make a Hand (a); 12 Inches a Foot [b]; three Foot a Yard [c]; a Yard and nine Inches make an Ell [d]; five Foot make a Geometrical Pace; six Foot a Fathom; 16 Foot and a half makes an ordinary Pole Rood or Pearch [e]; 40 Pearches make a Furlong; 8 Furlongs an *English* Mile [f]; 69 $\frac{1}{2}$ such Miles are a Degree.

9. As to square or superficial Measures; an Acre [g] of Land consists of 40 Pearches in Length, and 4 in Breadth; 13 Akers are an Oxgang [h]; and 4 Oxgangs make *librata Terra*. 30 Acres in some Places, in some 20, and in some 24 make a Yardland or a Verge of Land [i]; 100 are accounted a Hide of Land, or a Plowland [k]; and 40 a Mile Square.

10. Receptive Measures of Capacity, are divided into liquid and dry Measures. In liquid Measures twelve Ounces or a Pound Troy make a Pint, 2 Pints a Quart; 2 Quarts a Pottle; 2 Pottles a Gallon containing 282 Solid Inches, and holding 10 Pound 3 Ounces *Averdupois*; 8 Gallons of Ale, Butter, Soap

(a) Horses are measured by the Hand. (b) Which they call *France Pie du Roy*, or the Kings Foot. (c) Which is the ordinary Measure of Cloth, Silks or the like. (d) Whereby Linnen is Measured. (e) But in several Counties the Pearch differs. A Foot is a Pearch of Fens and Woodland; 21 Feet of Forrest and Marchland go to the Pearch. (f) Which is about a half shorter than the Scots or Irish Mile. (g) Which is derived immediately from the German Acker, and mediately from the Latin *Ager*. (h) *Librata Terra* i. e. as much as an Ox can Plough. (i) *Virgate Terra*. (k) *Carrucata Terra*, i. e. such a Quantity of Land as might be laboured by one Plough in a Year.

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and Fish, and 9 Gallons of Beer make a Firkin; 2 Firkins a Kilderkin; 2 Kilderkins a Barrel (a); 54 Gallons of Beer make a Hoghead; 2 Hogheads a Pipe or Butt; and two Pipes a Tun.

11. But the *English* Wine Measures fall short of those of Ale and Beer. So as 4 Gallons of these are very near 5 Gallons of Wine Measure, whereof each contains 231 Cubical Inches, 8 Pound 1 Ounce, and 11 Drachms *Averdupois* of Rain-water. 18 Wine Gallons make a Runlet; 32 Gallons a Barrel; 42 a Tierce; 63 Gallons a Hoghead; 84 a Punchion; 126 Gallons a Pipe; 252 a Tun. Oyl and Honey are Measured as Wine, with a little alteration made by 23 *Eliz. cap. 8.*

12. The Dry Measures of Corn, Salt and Lime, are the Gallon, which is of a Size between the Wine and Beer Gallon, and contains 272½ Cubical Inches, and holds the Weight of 9 Pound 13 Ounces 12½ Drachms *Averdupois* Weight. 2 of these Gallons make a Peck; 4 Pecks a Bushel; 4 Bushels a Coomb or Curnock; 2 Curnocks make a Quarter, Seam or Raft; and 10 Quarters a Last or Wey. This is called *Winchester* Measure. But Sea Coal (b) and Salt (c) are measured by Heap, or else 5 Stricked Peck

(a) *Nota*, 'Tis only in *London*, and within the Bills of Mortality, that 36 Gallons of Beer and 32 of Ale go to a Barrel. For 48 Gallons are reckoned a Barrel of Beer or Ale in all other Places of *England*, and consequently here. *Vide part 1. page 55.* (b) a Sack of Coals was formerly four, and is now three Bushels; 36 Bushels are a Chaldron, and on Ship Board 21 Chaldrons are allowed to the Score. (c) 84 Pound of Foreign Salt and 65 Pound of Rock-Salt are reckoned a Bushel, 1 *A. Sess. 1. cap. 21 § 6 & 9.*

are allowed to the Bushel, which goes under the Denomination of Water-measure. The Water-Measure of Fruit is by a late Statute (a) ascertained to be Round 18 Inches and a half Diameter, and 8 Inches deep, and who are convict before a Justice of Peace, of Selling Fruit by any other Measure (except in *London* and 3 Miles about it) Forfeit 10 Shillings to the Informer and Poor of the Parish.

13. Some things are not Sold by Weight or Measure, but by Tale or Number. Such as Cattel, Fish (b), Headed things (c), Hides (d), Paper (e), Parchment (f), Skins (g), and Tiles (h).

14. But albeit there be the same common Standarts for Weight and Measure here, with our Neighbours of *South Britain*: the legal Punishment of Persons using false Weights or Measures, is not the same in *Scotland* and *England*.

15. By the Law of *England*, all Mayors, Bailiffs and Head-Officers of Cities, Burrows and Market-Towns, should twice a Year or oftener, as they think fit, View and Examine all Weights and Measures there: and Break and Burn such as they find to be defective. And two Justices *quorum unus* may Fine these Magistrats

(a) 1 A. Seff. 1. cap. 15. (b) 120 Cattel and Fishes are Sold for a hundred, except hard Fish, whereof 124 go to the hundred. (c) As Nails, Pins &c. whereof 120 pass for a 100. (d) 10 Hides are a Dicker, and 10 pair of Gloves make a Dicker, 20 Dickers are a Last. (e) 24 Sheets are a Quair, 20 Quair a Ream; 10 Ream a Bale. (f) 12 Skins of Parchment make a Dozen, and five Dozen a Roll. (g) Of Furrs, Filchies, Grays, Jennets, Martins, Minks and Sables, 40 Skins is a Timber, of other Skins five Score go to the Hundred. (h) Whereof six Score are Reckoned for the 100.

or City Officers, who neglect their Duty, and all Buyers or Sellers with unlawful Weights or Measures, and may Break and Burn such Weights or Measures (a).

16. In Scotland, the users of false Weight or Measure, at first were only liable to a Fine [b], and Judged by the Baillies of the Burgh for the first three Faults, and for the fourth by the Justices [c]. By the 14 Statute of King David the Second, the Payment of eight Cows to the King, was the Punishment of unlawful Weight [d]. But now the Deceivers of People by false Measures and Weights, are to be Indited before the Justice Court, as guilty of Falsehood [e]: And Escheat their whole Goods and Gear to the Queen [f]. And the havers of false Weights or Measures, are presumed to have used them, or had them only for use, unless the Presumption be taken off by proving, that they were presently Bought or Borrowed, or laid aside when found upon Trial to be unsufficient [g]. Yea, even the using of larger Weight or Measure than Law determines, is Punishable: tho' the Seller only would thereby seem prejudged. Because, he may receive as well as give out by it; And no Man is presumed to keep any Weight or Measure to his Disadvantage. And as Carpzovius [h] observes, *Falsi pena Arbitraria tenetur, quicumque in sua Mercatura addit inutile; ut calcem in vino,*

prejudiced

(a) 11. H. 7. cap. 4. 16 Car. 1. cap. 19. 22 Car. 2. cap. 8. 22 & 23 Car. 2. c. 12. (b) Leg. Burg. c. 52. (c) Ibid c. 74. (d) The Weight of Cathness was then the Standart Weight for Buying and Selling. (e) Act 47. Par. 4. J. 4. (f) Act 2. Par. 19. J. 6. (g) Macken. Observ. on Act 47. Par. 4. J. 4. (h) *Rev. Crim. part 2. §. 93. n. 80.*

pulverem

pulverem arenam in blado, Pomam in Cera, aut species aridas detinet in loco humido, ut crocum &c.

Some Buyers and Blockers of Victual being in use at the making of their Bargains, to cause the Seller agree to superadd and deliver to them gratis, a Peck to every Boll of Victual Bought, whereby the Leidges benefit by the Standart Measures was eluded: To prevent this manifest abuse and extortion, the Parliament discharg'd (a) in Bargains for Victual, any one or additional Quantity to be taken, except for Payment of the Price agreed for the first Boll, under the pain of 40 Shillings to be paid by the Receiver for every Boll received besides the Price; half to the Sovereign, half to the Informer [b]. But this excellent Law is not well observed.

*Bargaining
for*

over-measure.

17. Many things might be said upon the Subject of Weight and Measure: But I dare not expatiate, least I be thought to exceed measure in my Discourse.

XVI.

About the Customs and Excise.

The Duty and Powers of Justices of Peace in Relation to the Customs and Excise, are fully Treated of in the first Part, Chap. 2 and 3.

(a) There is the same reason for this Prohibition of a Peck to the Boll, tho with consent of Parties; that there is for Discharging Usury. (b) *Act 17. Par. 23. J. 6.*

About Trade, Buying and Selling.

The Duty of Justices of Peace in Relation to Trade, Buying and Selling, consisteth partly in hindering or punishing the Import or Export of Prohibited Goods, in order to Sale; Partly in checking Fraud in Selling or Buying; Partly in setting a Price upon saleable Goods.

2. By the Law of *England*, any Justice of Peace may Declare Horse or Cattel Imported from *Ireland*, or elsewhere beyond Sea to *England*, Forfeited, half to the Poors use, and half to the Informer (*a*). The Ship bringing over such Cattel shall be also Forfeited and applyed in that manner; and the Seamen and others concerned may be committed by a Justice of Peace to Jail three Months without Bail (*b*). Ling er Herring taken by any Foreigner and Imported for Sale, may be seiz'd, half to the Seizer, and half to the Poor (*c*). A Justice of Peace upon Complaint at any reasonable time, may give Warrant to a Constable to enter and search Shops and Houses for Foreign Imported Bonelace, Imbroidery, cut Work Fringe, Buttons or Needle-work, and seize the same (*d*).

3. By the Law of *Scotland*, no Horse or Cattel from *Ireland* could be Imported or knowingly Refet or Bought here, under the pain of Confiscation.

Renewed.

(*a*) 18 Car. 2. c. 2. § 1. (*b*) 20 Car. 2. c. 7. § 5. 32 Car. 2. c. 2.
(*c*) *Ibid.* 8. 18 Car. 2. c. 2. (*d*) 13 & 14 Car. 2. c. 13. § 3 & 4
4 & 5 W. & M. c. 10.

tion, and 100 Merks for each Beast; half to the Sovereign, half to the Discoverer, he Pursuing and Instructing the Importation within six Months (a). For Encouraging Trade and Manufactures, in the Year 1681, there was a large Prohibition of Import (b), with Certification, that the Prohibited Goods should be Burnt or Destroyed, the Importers and Refettters Fined in the Value, and the Wearers in 300 Merks, besides Confiscation of the Clothes. Collectors of the Cess, Excise and Customs, and Waiters, were ordained Termly to give up on Oath a List of Transgressors to the Judges Ordinary and Justices of Peace; and the Penalty of such as after Tryal they found Guilty within three Months after Information, were to go half to the Sovereigns use, half to the said Collectors and Waiters. Who for neglect to give up such Lists were to Lose their Places, and be for ever incapable of that Office. And any other Person timeously discovering the Contraveeners, and furnishing Probation against them, were to get half of the Penalties. All Foreign Woollen Manufacture except Flanen, by the *Act 8. Sess. 9. Par. W.* Stuffs or other Manufacture wherein any Cotton, Hair, Silk is found, White Threed, Laces and Points, except Musline, plain Black Silk Stuffs, Velvets for Womens Hoods and Scarffs, and Velvets or other Silk Stuffs for States, Chairs of State, Pales, Mortcloths, Footmantles, and Robes of publick Offices now in use, by the *Act 12 Ibid.* were severely Dis- charged to be Imported or Worn, and the Goods

Receivers

Forbidden

(a) *Act 14. Sess. 2. Par. 7. 7.* (b) *Act 12. Par. 3. Ch. 2.*

to be Destroyed, and the Contraveeners punished in the Terms of these Statutes by Order of a Magistrate, with the Concurrence of two of the next Commissioners of Supply, or Justices of Peace. By the Act 10 *Ibid.* All *French* Wines, Brandy and other Strong Waters and Vinegar, were Discharged to be Imported under the pain of Staving and Destroying the Liquors, in presence of a Magistrate and a Justice of Peace of the Shire, and Confiscation of the Ship, half to the Discoverer, half to the Sovereigns use, and a Fine of 1000 Merks to be payed by the Merchant Importer, and 500 Merks by the Skipper; two parts to the Discoverer, and a third to the Fiscal of the Court where the Merchant is Convict. And all Judges Ordinary, and Justices of Peace, are required to concur in seizing and destroying the said Prohibit Goods, and to Judge and Decern against all these *Delinquents*, under the Penalty of 500 Merks in case of Refusal *toties. quoties.* And the Merchant and Master of any Wine Ship come from the Bay of *Biscay*, and all the Seamen must, before Unloading, in presence of the Judge of the Port, and two Justices of Peace, give their Oaths that the Ship came truly from the Port mentioned in her Documents; and they don't know or believe the Wine Imported to be or have any mixture of *French* Wine. Any Lint of *Scots* Growth, or Linen Yarn was Discharged to be Exported under the pain of Confiscation of the same, and all other Goods bound up in Pack or Cask therewith in order to Export; half to the Poors use, half to the Informer or Attacher. Collectors, Surveyors or Waiters any ways Accessory to the Exporting of any such Lint or Linen,

*Determine**Docketts*

Linen, shall be deprived and declared incapable of their Offices in all time thereafter. And Inferior Judges Ordinary, or Justices of Peace, were to put this in Execution within their respective Jurisdictions (a). So much may suffice to shew, that it is the proper Province of Justices of Peace to Execute Prohibitory Laws concerning Trade. Albeit since the Union we are generally under the same Restrictions in that matter with our South *British* Neighbours. But yet by that Treaty (b), during the continuance of the Duty of two Shillings 4 Pence a Bushel upon Salt made in *England*; no Salt is allowed to be brought from *Scotland* to *England* by Land, under the pain of Forfeiting the Salt, and the Cattel and Carriages made use of in bringing the same, and paying 20 Shillings for every Bushel of such Salt, and proportionally for a greater or lesser Quantity; for which both the Carrier and the Owner are liable jointly and severally, and the Carriers to be Imprisoned by any Justice of Peace six Months without Bail, and till the Penalty be paid.

4. By the Law of *England*, Justices of Peace may Fine Sellers or Retailers of Wine for mixing or sophisticating the same (c).

5. By our Law, the bringing Home corrupt or mixt Wine, the Buying or Selling it after it is declared to be such, and the mixing of Wine or Beer; were discharg'd under the pain of Death (d). Which in the Opinion of Lawyers

(a) *Act 29. Sess 4. Par. W. & M.* (b) *Art. 8.* (c) *12 Car. 2. c. 25. 1 W. & M.* (d) *Act 89. Par. 12. J. 3.*

is a kind of Falshood, and punishable as such (a). Taverners mixing Wines, or hoarding the same, Escheat the Wines, and lose their Freedom (b). For preventing Fraud in Selling, Woollen Cloth is to be Met by the Ridge (c); Linen by the Selvedge (d): Because Woollen Cloth stretches when Measured by the Selvedge, and the Selvedge of Linen hinders it to stretch. Linen Yarn is not to be Sold but by Weight, and put up in Hasps containing 12 Cuts each, and each Cut six score Threads: Nor any Reel to be used that is not ten Quarter long, under pain of Confiscation of the Yarn. And Justices of Peace, or other Inferior Judges are to see to the Execution hereof. And that Linen Cloth be Exposed to Sale in the way and manner prescribed by the *Act 29. Sess. 4. Par. W. & M.*

6. By the Law of *England*, two Justices of Peace *Quorum Unus* are Impowered to set a Price upon Coals sold by Retail: Providing they be not Coal Merchants, and have Interest in any Wharfs used for receiving or uttering Coals (e). Justices of Peace may Fine Wine Sellers for exacting a greater Price than is appointed by 1 *W. & M.* c. 34. within 30 Days of the Offence, in 50 Shillings, to be given to the Informer and Levied by Distress: And may commit to Prison till the next Quarter Sessions, such as Beat or Abuse the Officers or Informers, and the Justices at the Sessions may Fine them, not exceeding 5 Pound, and commit them to Prison till they be set at Liberty by two of these Justices (f).

(a) *Vide Carpzov. de Crimine falsi.* (b) *AB 11. Par. 5. 2 M. AB 126. Par. 7. J. 6.* (c) *AB 32. Par. 5 J. 3.* (d) *AB 43. Par. 1. Ch. 2.* (e) 16 & 17 *Car. 2. c. 2. junct. 7 & 8 W. 3. c. 36.* (f) 2 *W. & M. Sess. 2. c. 14.*

XVIII.

About Nuisances.

As in the Civil Law where a Crime wants a known Title, it is brought in under the general of *Stellionate* (a): So in the *English* Law *Injuria innominata*, Nameless Injuries are termed Nuisances (b). For which there lyes a Writ of Nuisance, now much turned into an Action upon the case called by us *Actio præscriptis verbis*.

2. By the Law of England, any Justice of Peace may Fine (c) the Maker or Seller of Squibs, Rockets, Serpents or other Fire-works, or Moulds or Implements for making thereof, in five Pound; And such as permit these to be thrown or fired out of, or in their House, into any publick Street, Highway, Road or Passage, and the Throwers or Firers, or their Accomplices, in 20 Shillings, half to the Poor, half to the Informer. And if the Party throwing or assisting therein, do not pay the Money, they may be committed without Bail to the House of Correction for a Month (d). A Person Watering Hemp or Flax in any River or running Water where Beasts are usually Watered, Forfeit ten Shilling, half to the Queen, half to the Party grieved, or to the Pursuer (e). Travelling with Waggon not

(a) *L. 3. § 1. ff. de Stellionatn.* (b) Nuisance comes from the French *Nuire nuire*. (c) But the Officers of the Ordnance and Persons Authoriz'd by them, Artillery Companies and Militia are not liable to these Penalties or Forfeitures. (d) 9 & 10 W. 3. c. 7. (e) 33 Hen. 8. c. 17.

sized (a); and putting Infected or Scabby Horses into a Common (b); are also Nufances.

3. By our Law, the setting of Cruives and Zairs in Fresh Water where the Tide Flows; the Erecting any Ingines on Waters to hinder Smolts from going to Sea; the slaying of Salmon betwixt the Feast of Assumption and St. Andrews Day; Fishing at Miln-Dam Dikes with Nets Stented, or other Ingines; Fishing with Pock-Nets or Herrywater Nets; are all punishable Nufances. Yea, Men are discharged to lay Lint even in their own Lochs or Running Burns (c): As being not only hurtful to Fishes Bred there; and Cattel that Drink of the Water, but also Noisome to Neighbours. For, albeit commonly any Person is free to do *in suo* what he thinks for his own Advantage, tho prejudicial to his Neighbour: Law doth not suffer the doing of any such thing *in Emulationem Alterius*, with a design to Wrong another (d). And the Exercise of Property is in many things Restrained for the Good of the Common Wealth.

(a) 12 & 14 Car. 2. c. 6. § 10. (b) 32 Hen. 8. c. 13. § 9.
 (c) Vide Sup. page 70, 71, 72. (d) L. 24. § ult. ff. de damno infecto.

C H A P. III.

The Particular Duties and Powers of Justices of Peace in the General or Quarter-Sessions.

THE Nature, Constitution, and Constituent Members of the Quarter-Sessions, and what else concerns that Court in General, being already Explained *(a)*: I go now upon the detail of Affairs cognoscible therein, according to the proposed method. Not as if any thing that may be done out of Sessions, could not be done there: But only that some things are considered to be of such Importance, as not fit to be determined in a less solemn meeting than the Quarter-Sessions.

S E C T. I.

The Security private Persons have by the Government of Justices of Peace, from disturbance and injuries in their enjoyments.

BY the Law of *England*, the General Sessions of Peace may fine and Imprison Barretors *(b)*. And Pursuing or causing one to be Arrested in another's name without his consent, is a kind of Barretry, Punishable by six Months Imprisonment without Bail, and Payment of treble Costs.

(a) *Sup: p: 6, 7, 8, 9, 10, 11.* *(b)* *34: Edw: cap: 1.*

and Damages to the Party Lefed, and ten Pound to the Person whose name was borrowed (a). A Person convict of having struck another, or drawn a Weapon in a Church or Church-yard, with a design to Strike, should be adjudged to have one of his Ears cut off, or for want of Ears, to be burnt in the Cheek with the Letter F; to be known thereby for a Frey-maker or Fighter (b). The Justices in their Quarter-Sessions may judge petty Larceny and Punish the Offender by Imprisonment for a time, and Whipping (c). Any Sheriff, Under-Sheriff, or their Clerks, Coroners, Bailiffs, Keepers of Prisons, or other Officers or Ministers, exacting extravagant or undue Fees in their Respective Offices, may be decerned to pay treble Damages to the Party grieved, and 40 lib. to be divided betwixt the Sovereign and the Informer (d). A Person Lefed by the violent taking of any thing or carriage from him, under colour of Purveyance or Provision to the Queen &c; may recover treble Damages off the Offender (e).

2. By the Law of *England*, A Fraudulent Bankrupt convicted before the General Sessions of the Peace, ought to be set upon the Pillory for two Hours, and to have one of his Ears nail'd thereto, and cut off (f).

3. With us Declarators of Bankrupt are to be obtained before the Lords of Session. And Fraudulent Bankrupts are not only held infamous *infamia juris*, but may be farther Punished by

(a) 3 *Elix: cap: 2. § 4.* (b) 5 & 6. *Edw: 6: cap. 4. § 3.* (c) *Dalt. c. 40. 154.* (d) 25. *Hen. 6. c. 10.* (e) 12 *Car. 2. cap. 24. § 14.* (f) 21. *J. c. 19. § 7.*

*Fees
adjudged*

*hurt
injured*

Banishment or otherways, Death excepted, as their Lordships think fit. Who are Discharged *forbid* to dispense with the Dyver-habit, unless in the *off party* Process of *Cessio*, the Bankrupts failing through *Colonies* misfortune, be Libelled and proven (a). *Coat.*

4. By the Law of *England*, Any Person convict before the Quarter-Sessions of having taken Hawks or their Eggs out of anothers Ground without Licence, shall be Imprisoned three Months, pay the Party treble Damages, and be thereafter bound to the good Behaviour, or ly in Prison seven Years (b). And the finder of a lost Hawk should bring it to the Sheriff, who ought to proclaim in all the good Towns of the County, that he hath such a Hawk in keeping: Which may be challenged by the Owner within four Months. And who Steal or carry away any Hawk, without observing this Ordinance, is to be dealt with, as a Thief that Steals a Horse [c]. Offenders by Hawking or Hunting with Spaniels in other Mens Eared Corn, without consent of the Owner, may be fined in the Sum of 40 Shillings *toties quoties*, to be paid to the owner of the Corn [d].

5. By our Law, no Person is allowed to Steal [e] anothers Hawks, or Hounds, or eggs out of Hawks Nests [f]; nor to Sell or give away any

(a) Act 5. Sess 6. Par. K. W. (b) 5. Eliz. cap. 21. § 3 & 6. (c) 37 Edw. 3. c. 19. (d) 23 Eliz. c. 10. (e) Here the Stealing of Dogs, Hawks or the like, is only punish'd by a Fine, and not as Theft: because, the taking away of things designed more for Sport than Gain, is not *contrectatio rei alienae lucri facendi gratia*. But Sir George Mackenzie doubts if one poor Fowler Stealing anothers Dog who lives by that Trade, may not be Punished as a Thief. Observe on the Act 60: Par. 7. §. 3. (f) Act 32. Par. 23. §. 6.

Hawk or Dog that is not his own [*a*]; under the pain of 100 Pound. Nor to Steal a Hawk out of the Nest or Air, or take a Collar from a Dogs Neck, or Vervel from a Hawk, with the Masters Name or Stile on it, under the pain of 500 Merks. And who find such a Dog or Hawk got louse or strayed from the Owner, must within 48 hours after taking thereof into his Possession, Book it in the Sheriff-Clerks Books, as waith Goods; under the Penalty of 40 Pounds, which the Owner may Pursue for before any Judge competent. But if the Dog or Hawk is not Claim'd by the Owner, within six Months after Booking, it shall belong to the Possessor [*b*].

Jue -

6. By the Law of *England*, The Quarter-Sessions may Punish by Imprisonment, setting on the Pillory, or otherways Corporally death excepted, Persons convicted before them, of deceitful getting Money or Goods into their hands, by Counterfeit tokens or Letters [*c*], but prejudice to any Action competent to the Party Lefed for Restitution of his Goods [*d*]. One convict of having Personated any Sea-man, Soldier, or Workman; in order to receive Money due by the Sovereign to them, may be fined in double of the Sum demanded, and Imprisoned during the Justices pleasure, not exceeding a Year [*e*]. Yea, a Person was Fined for Counterfeiting a Protection, tho in the name of one who had no Power to grant it [*f*].

(*a*) 21. Par. 1. f. 7. (*b*) *Ibid.* (*c*) 33. H. 8. c. 1. § 2. (*d*) *Ibid.* § 4. (*e*) 22 & 23. Car. 2. c. 23. § 6. (*f*) 1. Syd. 142.

7. By the Law of Scotland, Falshood is committed by assuming a false name, and by presenting one Person for another, at the Subscribing of Papers. Which *suppositio falsa Persona*, is Punishable in the Civil Law, as *parius suppositus*. And Sir George Mackenzie [a] Observes, that one was Hang'd for making use of a false Person to Subscribe an Assignment. And by the Civil Law [b], *falsi nominis vel cognominis asseveratio, pena falsi coercetur*. Yet James Clerk in anno 1634, having got from a Servant a Sword sent to Moubray, by saying that he was Moubray; this was not sustained to infer Falshood, but only Stel-
lionate.

*he only
called himself
Moubray &c.
did not write
himself so.*

SECT. II.

What Justices of Peace may do in their Quarter-Sessions for Restraining Immorality and Prophaneness.

By the Law of England, Persons found guilty before three Justices *quorum unus* at the Quarter-Sessions, of depraving or speaking irreverently of the Sacrament of the Body and Blood of our Saviour JESUS CHRIST, are liable to Imprisonment, and to make Fine and Ransom at the Queens will (c).

2. By our Law, The single and Liferent Escheats of Prophaners of the Sacraments fall to the Queen (d).

3. By the Law of England, The Breach of Re-

(a) Crim. Tit. Falshood. (b) L. 13. ff. ad L. cornel. de falsis.
 (c) 1 Edw. 6. cap. 1. § 1. (d) Aft 24. Par. 11. § 6.

cognizances granted by Ale-house Keepers, for their observance of good order, must be heard and determined in the Sessions. And suppress Alehouses cannot be allowed again but there (a). But they cannot in the first instance judge Bastardy : yet if the two Justices next to the Parish where the Illegittimat Child is born, make no provision for it, the Sessions may [b]. The Justices at their Quarter-Sessions may Fine for disturbing Divine Service, or abusing Preachers or Teachers in twenty pound [c].

4. By our Law, Those who raise a Tumult or Frey in the Church, the time of Divine Service, incur the loss of all their Moveables [d]. And Excommunicate Persons refusing (being Charged) to Remove, are Punishable as Disturbers. But Children (under whom all within 14 Years are comprehended) offending in this sort, are only to be Whipped [e]. Such as are found guilty of Assaulting the lives of Ministers, or Robbing their Houses, or actually attempting the same, are Punishable by Death, and Confiscation of Goods; And there is a reward of 500 *Merks* for Discovering and Apprehending, or 200 *Merks* for Discovering, and 300 for Apprehending the Offender, to be paid out of the Treasury (f).

(a) *Per Warburton.* (b) *Jones 330.* (c) *1 W. & M. cap. 18.*
 (d) *J. 6. Par. 11. cap. 27.* (e) *Act 17. Par. 5. 2. Mar.* (f) *Act 4. Par. 2. Sess 2. Ch. 2.*

SECT. III.

Works of Charity and Piety falling under the Cognizance of the General Sessions.

BY the Law of *England*, Taxes imposed by two or more Justices, for Relief of poor Persons infected with the Plague, must be certified at the next Quarter-Sessions : who may continue, in large, or otherways Determine the same, as they think fit (a). Every Justice dwelling in a Parish where the yearly nomination of Overseers for the Poor is omitted, Forfeit five Pound to the Poores use ; to be Levied by Warrant from the General Sessions (b). And where two Justices think a Parish not able to Relieve their Poor, nor the Hundred sufficient to supply them, the Justices at their General Sessions may Assess for that effect those in other Parishes within the County (c). Parents and Grand-parents, Children and Grand-children of impotent Poor Persons, may be subjected to a Contribution for their Relief and Maintenance assess'd there (d). Every Parish may be Assess'd at the Quarter-Sessions after *Easter*, in a Weekly Payment for Relief of Maimed Soldiers, not above ten or under three Pence, to be rated by the Parishioners among themselves, and by the Justices, in case of the others failing to do it : And to be Levied by distress. The Church-wardens and Petty Constables may

(a) 1 J. c. 31. *junct.* 16 & 17. *Car.* 1. c. 4. (b) 43 *Eliz.* c. 2. § 10.
(c) *Ibid.* § 3. (d) *Ibid.* § 7.

be Fined in twenty Shilling, for neglecting to Collect and pay in the Money to the High-Constable, ten days before the Session, and he in 40 Shilling, for not giving up the same at the Sessions, to the Justice appointed Treasurer: And the Treasurer may be Fined in five Pound for not Accompting. Disabled Soldiers and Seamen, may receive from the Treasurer of the County where they were press'd, Relief until the Sessions: Who may grant a Liferent Subsistence, by yearly Pension, not exceeding 15 Pound to any Officer under a Lieutenant, nor above 20 Pound, to a Lieutenant, nor above ten Pound to an inferior Soldier, who hath not born any Office: but may Alter or Revoke the same. The Treasurer refusing to give Relief, may be Fined at the Sessions, and his Fine applied to Charitable uses (*a*). The Justices there may provide a Stock of Materials, to set Prisoners on Work, to be raised as other County Charges: and may appoint Overseers, and settle Orders thereanent; provided no Parish be Rated above six pence a Week (*b*). Persons in Prison for Debt, not exceeding 100 Pound due to one Person, contracted before the 8 November 1703, were by the 2 & 3. A. c. 16. Allowed to be brought before the Sessions, and upon taking the Oath mentioned in the Act, and being found so Poor, that they had not wherewith to maintain themselves in Prison; and their Creditors cited neglecting for 30 days to pay their Aliment appointed by two Justices, not exceeding four Pence *per Diem*, or

(*a*) 43. Eliz. c. 3. (*b*) 19 Car. 2. cap. 4.

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Justices of Peace.

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not compearing; these Prisoners might have been discharged from Imprisonment, without Payment of any Chamber Rent, or Jailor Fee, by an Order Signed by two or more Justices in open Court: provided the Prisoner entred himself in the Queens Service, or procured an able Bodied Man to be Listed in his Stead.

S E C T. I V.

The Duty and Powers of the Justices of Peace in th^r Quarter Sessions in relation to the Publick Policy, Security and Government.

I.

What they are to do for purging the Country of Rogues and Poor Idle Vagrants.

BY the Law of England, The Justices in their General Sessions, may Judge and Punish as Felons, Idle and wandering Souldiers or Mariners, wanting a Testimonial of a Justice of Peace of or near the place where they Landed, or having Forged Testimonials. Unless some honest Freeholder would take such a Wanderer into his Service for a Year, and oblige him under the pain of ten Pound to keep him all that time, and then to present him to the next Sessions. And if the wandering Servant leave his Master before the end of the Year, he shall be Judged as a Felon (a). Invalide Souldiers under Pension, found Begging

(a) 39 Eliz. c. 17. § 3 & 4.

may be punished as Rogues (*a*). Incorrigible Rogues (*b*) are punishable by Banishment, and cauter. Stamp the Letter R. with a hot Iron upon their left Shoulder. And any Banished Rogue returning is liable to the pain of Death (*c*). The Justices at *Easter* Sessions are to Ascertain and set down the Rates, to be allowed the Year ensuing for Maintaining and Conveying Vagrants through their respective Districts (*d*). For the more effectually easing & cleansing the Country of such Vermine; the Justices at their Quarter Sessions may set down Orders for Erecting Houses of Correction, and indowing the same (*e*). And a House of Correction should be provided by the Justices of Peace in every County where there is not one already, or they Forfeit 5 Pound; half to the Pursuer, and half to be Employed for the Erecting and Providing such a House. They may also appoint Governours of Houses of Correction, with Power to set Rogues, Vagabonds, Idle, and disorderly Persons sent there to Work: And may settle a Yearly Allowance to such Governours. Who, for neglect to give a true account to every Quarter Sessions, may be Fined by them at their Discretion [*f*]. A Child brought forth in the House of Correction, must be sent to the Parish the Mother was brought from (*g*).

2. By our Law (*b*), The Magistrats of certain Burghs were Ordained to provide betwixt and *Whitsunday* 1673, Correction Houses for Receiving and Intertaining of Beggars, Vagabonds

(*a*) 43 Eliz. c. 3. (*b*) *Vide Sup.* page 61. (*c*) 39 Eliz. c. 4.
 (*d*) 1 A. Seff. 2. c. 13 § 6. (*e*) 39 Eliz. c. 4. § 1. (*f*) 7 J. c. 4.
 (*g*) 2 Bulst. 358. (*b*) 18. Seff. 3. Par. 2. Ch. 2.

and idle Persons, and such as should be sent to them out of their respective Shires, or Bounds, under the Penalty of 500 Merks Quarterly, till the Correction Houses were set up: To be paid to & applied by the Commissioners of Excise, for Building or Buying Houses for that effect. And for inabling the Burghs to bear the Expenses of the Correction Houses, they were to have two Shillings *per Diem* for every Person sent to and Intertained by them for the first Year; and 12 *d.* daily for 3 Years thereafter, together with the Profit of their Work for 7 Years thereafter. Which Allowances were to be paid by the Parishes relieved of the said Poor, in manner prescribed by the *Act 16. Par. 1. Sess. 3. Ch. 2.*

I I.

For preserving the Game.

By the Law of *England*, who enter into any Park or inclosed Ground, to Hunt Deer shall be Imprisoned for three Months, pay treble Damages, and be bound with Sureties to the good Behaviour, or ly in Prison 7 Years: Unless discharged by the Party grieved (a). The Sessions may inflict the Penalty of 6 *lb.* 8 *d.* on such as Kill Hares in the Snow (b). They may punish the Keeper of Nets called Deerhays or Buckstalls without having a Park, in ten Pound *per Menssem*; and may Finethose that Stalk with Bush or Beast any Deer without leave of the Owner, in ten Pound for every time (c).

(a) 5 *Eliz. c. 21.* 3 *J. C.* 13. (b) 14 & 15 *H. 8. c. 10.* (c) 19 *H. 7. c. 11.*

2. By our Law, no Person is permitted to Shoot Hares, Deer or Roe, in time of Snow, under the pain of 100 Pound [a]. The Killing, Selling, Buying or Using Muir-fowls from the first of *March* till the twenty of *June*, and Partridges from the first of *March*, to the twenty of *August inclusive*, is now strictly Prohibited under the Penalty of 20 Pound *toties quoties*; half to be given to the Discoverer, and half at the Disposal of the Judge. Common Fowlers presuming to Hunt without a subscribed Warrant from the Proprietar of the Ground, Forfeit the foresaid Penalty, besides their Dogs, Guns or Nets, to the Apprehender or Discoverer. And being found in any place with Guns or Nets, having no Licence from any Nobleman or Heretor, shall be sent Abroad as Recruits. And the Shooting of Hares is discharged under the foresaid Penalty. Sheriffs, Stewarts, Justices of Peace, Masters of the Game, Baillies of Burghs or Regalities, are appointed to put this Law to due Execution, under the pain of 100 Pound: For which they shall be liable to the Puruer before the Lords of Session, upon an Instrument taken by him, that the Judge applied to, Refused or Delayed to Cognosce and Decern for such Offences (b).

3. What hath been said under another Head [c], concerning the preventing and punishing in the Quarter Sessions, fraudulent taking away anothers Hawks or Hounds, or Eggs out of Hawks Nests, or the concealing strayed Hawks or Hounds; falls in naturally to be reconsidered here.

(a) *Act 32. Par. 22. §. 6.* (b) *Act 13. Sess. 4. Q. A.* (c) *Vide Sup Sect. 1. § 4 & 5.*

III.

For Improving Ground to the best Advantage.

By the Law of *England*, for preserving the Breed of young Beasts and Cattel; every Person usually keeping six score Sheep for the most part of the Year, on his several Pastures apt for Milk Kine, shall for every sixty Sheep keep a Milk Cow, and for every six score Breed a Calf, or Forfeit 20 Shillings. And who keep above 20 Oxen, Runts, Schruks, Steers, Heifers, or Kine, shall for every ten of these Beasts keep one Milk Cow; and Breed and Wain Yearly and keep a whole Year a Calf for every two Milk Cows, under the pains foreſaid; to be Recovered before the Justices of Peace at their General Sessions (a). For hindering the neglect of Tillage, by Peoples turning all the Lands they Possess to Pasture; the Forfeiture of 3 *lb.* 4 *d.* is incurred, for each Sheep that one keeps above 2000, half to the Sovereign, half to the Pursuer (b).

2. I cannot, for the present Remember any particular Rule that our Law gave to Persons about the Stocking and Improving their own Ground, except by Planting and Policy since the Year 1457: When each Man having a Plough of eight Oxen, was ordained to Sow at least a Firlof of Wheat, half a Firlof of Pease, and 40 Beans Yearly, under the pain of ten Shillings to be exacted by the Baron, who was to Sow as much upon his own Domains, under the like

(a) 2 & 3 *Edw. I. c. 3.* 13 *Eliz. c. 2.* 7 *J. c. 8.* (b) 25 *H. 8.* 6. 13.

Penalty, and to exact the Fine from his Tennents, under the pain of 40 Shillings (a). But Rights of Common Pasturage with us, are Regulated and Proportioned according to the Extent, Use and Exigence of the Dominant Tenements [b].

I V.

For mending and upholding Highways and Bridges.

By the Law of England, Justices of Peace in their Quarter Sessions, upon a Representation that any Bridge is decayed, (with the Reparation whereof no particular Lands are solely Chargeable) are Impowered to Assess every Town and Parish in their Commission proportionably, towards the Repair of the said Bridge, and 300 Foot of Highway adjoining. Which Money Constables are to raise by Distress and Sale of Goods off the Refuser to pay within ten Days after Requisition, and to deliver the same to a Treasurer or Receiver whom the Session should Name for Employing the same by their Direction. The Justices may allow a Reward not exceeding 3 Pence of the Pound to Persons concerned in the Execution of their Orders for Repairing Bridges [c]. Where they are satisfied that the Common Highways, Causeys, Bridges, Streets, or Pavements within their respective Jurisdictions, cannot be sufficiently helped and supported without the Benefit of the Statute 3 & 4 W. & M. c. 12. They may Order to be Levied for that end

(a) *Act 81. Par. 14. §. 2.* (b) *Statr Inst. l. 2. tit. 7. § 14.*
 (c) 1 *A. C.* 18. *junct.* 22. *H. 8. C. 5.*

Assessments on Persons usually Rateable to the Poor, not exceeding in one Year six Pence in the Pound of the Yearly Value of Heritage, nor six Pence for twenty Pound of Personal Estate: Which if not paid within ten days after Demand, is to be Raised by Distress and Sale of Goods (a). The Justices in their Quarter Sessions may see to the Improvement of Lands given for Maintaining of Causeys, Pavements, Highways & Bridges, and to the right Application of the Rents thereof, according to the Will of the Donor; where the Trustees appointed by him for that effect prove Negligent or Malverse [b]. All matters concerning the Refitting of decayed Bridges, Highways, Causeys and Pavements, must be Determined in the proper Shire without a Remove by *Certiorari* to any higher Court (c).

V.

For Regulating Carriages, and Maintaining Correspondence betwixt distant Places.

At the General Sessions after *Easter* Yearly, the Justices are to Regulate the Prices of Land Carriage of Goods, to be brought within their Jurisdiction by any common Waggoner or Carrier; and to give a List of the Rates to the Chief Magistrate of each Market Town, to be hung up in some publick Place there, that none may pretend Ignorance (d).

2. By an Act of the Parliament of Great Britain [e], the Justices at their Quarter Sessions,

(a) 3 & 4 W. & M. c. 12. § 24. (b) 22 Car. c. 2. § 2. (c) *Ibid.* § 4. 3 & 4 W. & M. c. 12. § 23. (d) *Ibid.* § 24. (e) 6 A. c. 29. should

should from time to time, Order and Direct how many Horses or other Beasts are necessary to Waggon, Wains, Carts or Carriages, up Hills, within their Districts: Which Order should be made Patent by the Clerks of the Peace to all Persons *gratis*.

3. By the Law of *England*, For maintaining Correspondence and preventing Inconveniences by private Posts, a General Post-office was Erected in *London* by the 12 *Car. 2. cap. 35*. Wherein Rates are set upon Letters and Post-horses, of which a Post-master-general, whom the Sovereign doth constitute by Letters patent under the Great Seal, has the sole ordering. The Usurpers of his Privilege, and himself for Negligence, are liable to Fines to be Recovered before any Court of Record (a).

4. By our Law, Justices of Peace and other Judges and Magistrats, are ordained to put to Execution within their Respective Bounds, the *Act 20 Sess. 5. Par. W.* Whereby the General Post-master and his Deputs are allowed to exact from Persons to whom they furnish Post-Horses with a Guide, three Shillings of Hire per Mile; and to take for all single Letters to *Berwick*, or any part within fifty Miles to *Edinburgh* two Shilling; for double Letters four Shillings; and for single Letters to any place beyond 50 and within 100 Miles three Shilling, and for double six Shilling; for single Letters to be carried farther than 100 Miles four Shilling, and for double eight Shilling; and Proportionally: Letters with Bills of Loading or Exchange, En-

(a) Justices of Peace are Judges of Record. *Lambard. Lib. 1. cap. 13.* voys

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voys or other Merchant Accompts inclosed directed to any Place in *Scotland*, being considered only as single Letters; and Pacquets of Papers as triple Letters. Common unfree Posts or Carriers of Letters for Hire, are Fineable in twenty Pound for each Transgression; and in 100 Pound for every Months Continuance thereof. Common Carriers of Goods Seiz'd with Letters about them, not relative to Goods sent, or to be returned by them, may be Imprisoned Six days, and Fined in six Pound *toties quoties*. And any Person for Stopping, Molesting or Hindering an Authoriz'd Post, may be Fined in 1000 Pound, besides Reparation of the Damages of such as are Lefed thereby: And for Detaining or Robbing of Pacquets, to be liable in the pains contained in Acts of Parliament (a). But now our Post-Office is Managed by Commission from the General Post-master of *Great-Britain*, and the Profits thereof, are paid in to the General Receiver of the Revenue of the *British* Post-Offices.

V I.

For causing Masters and their Servants or Apprentices do just things to one another, and for causing Trades-men Work, and make sufficient Work at reasonable Prices.

By the Law of *England*, A Master putting away his Servant against his will, before the end

(a) The Robbing or Seizing the Mail or Pacquet of Letters, going or coming by the common Post, is declared Robbery and Punishable by Death and Confiscation *Act 3. Sess. 34 Par. Wil. & Mary.* of

of his time, or without a reasonable excuse allowed by a Justice of Peace, or after his time is out, without a Quarters warning be given before two Witnesses, may be fined by the Sessions in 40 Shilling (a). The Wages of Servants and Artificers are Yearly Asses'd at the first General Sessions after *Easter*, or within six Weeks thereof; and Printed and Proclaimed in the several Cities or Market-Towns before *Michaelmas*. And every Justice who, without a Lawful excuse allowed of in the Sessions, absents himself from the Taxing of these Wages, Forfeits ten Pound to the Queen (b). The Sessions may Punish Servants for Assaulting or Abusing their Master, Mistress, or Overseer, according to the Quality of the Crime; so as they proceed not to Life or Limb (c). They may also for just Cause (d) Discharge Apprentices, or Punish them if Faulty and Disorderly, upon a Reference from a Private Justice of Peace, who must judge betwixt Master and Apprentice *in prima instantia* (e).

2. Our Law allows Justices of Peace, in their Quarter-Sessions, to determine Servants and Sheriffs Fies (f); and to Regulate the Price of Penny-Bridals [g].

3. By the Law of *England*, The Quarter-Sessions may cause the users of Logwood in Dying, mount the Pillory, and Fine them in twenty Pound, half to the Queen, half to the Pursuer [h]. They

(a) 5. *Eliz. cap. 4. § 8.* (b) *Ibid. § 15, 16, & 17.* (c) *Ibid. § 21.*
 (d) The causes for putting away Apprentices, or deserting Apprenticeships, are much the same with those for dissolving the Relation betwixt Master and Servant. *Vid. sup. Pag. 88.* (e) *Dalt. 36.*
 (f) *Vid. Part 1. Pag. 7 & 13.* (g) *d. Pag. 7.* (h) 39. *Eliz. cap. 11. § 2.*

are also to judge of Penalties incurred for making insufficient Cloth for Sale; whereof the Overseers and Searchers who discovered the same, get a Third, and the Poor of the Parish the other two Thirds [a]. Who oppose the Overseers in their Search of faulty Cloth, or who resist any Justice of Peace, Constable or Overseer searching for Tenters, Wrinches or other Ingines of Stretching Cloath, may be Fined by the Sessions in ten Pound for the first Fault, 20 Pound for the Second, and be set on the Pillory for the Third [b]. For understanding the Legal Properties of Cloth, the 5 & 6 Edm. 6. c. 6. 4 & 5 Phil. & Mar. c. 5. 8 Eliz. c. 12. 27 Eliz. c. 17. 35 Eliz. cap. 10. 3 J. c. 17. 4 J. c. 2. may be consulted. Weavers are Regulated by 2 & 3. Phil. & Mar. cap. 11. The Quarter-Sessions may Judge the Stretcher or Impairer of Linnen, by declaring the Cloth Forfeited, punishing the Offender by a Months Imprisonment, and Fining him according to their discretion, the one half of which Fines goes to the Sovereign, & the other to the Informer [c]. No Person can exercise the Trade of a Silk thrower, unless he hath served Apprentice for the space of seven years, or Forfeit 40 Shillings a Month, half to the Queen, half to the Informer; to be recovered at the Quarter-Sessions of the Peace [d].

4. By our Law, A Weaver making Sarge, under the breadth of an Ell & a Nail, Perpetuanaes under three Quarters; and Woolen Cloth under an Ell; incurs the Penalty of 20 Pound;

(a) 21. J. c. 18. § 18. (b) 29. Eliz. c. 20. § 5, 8, & 10. (c) 1 Eliz. cap. 12. (d) 14 Car. 2. c. 15.

and the Cloth or Stuff falls under Confiscation; half to the Queen, and half to the Discoverer [a]. A Weaver should make Linnen of ten Shillings per Eln or upwards, an Eln and two Inches Broad; under the pain of 14 days Imprisonment, and 20 Pound Fine to the Judge Ordinary, and Escheat of the Cloath to the Attacher [b]. But the right Making and Measuring of Linen, is more particularly Regulated by the *Act 29. Sess. 4. Par. W. & M.* And Justices of Peace, or any other Inferior Judge competent, ordained to put the same to Execution.

5. By the Law of *England*, Butchers, Brewers, Bakers, Poulterers, Cooks, Colstermongers, Fruiterers, convict at the Quarter-Sessions, of conspiring not to sell their Victuals, but at certain Prices; and Artificers, Workmen and Labourers convict of Conspiracy, not to Work but at such Prices, or Hours, or so much in the day, nor to undertake the Finishing of what another began, Forfeit ten Pound to the Queen; And in case of insolvency, or not making Payment within six days, shall be confined to live twenty days in Prison upon Bread and Water; and for the second Fault incur the Penalty of twenty pound to be paid in six days, or the Offender to be set on the Pillory; and for the third Offence forty Pound must be paid in the like space, or the Offender is to mount the Pillory, and to have one of his ears cropt, and to be infamous. And any Corporation entering into such a Conspiracy, shall not only be liable to the foresaid Punishment, but

(a) *Act 42. Par. 1. Sess. 1. Ch. 2.* (b) *Act 43. Ibid.*

2. By the Law of *England*, If any commanded to be Mustered, absent himself without a Lawful Excuse, or come not with his best Furniture; he may be Imprisoned by the Sessions ten days without Bail, unless he agree to pay 40 Shilling to the Queen. Persons Authorized to Muster or Levy Men for Defence of the Kingdom, and Captains Licensing Soldiers to depart, taking Reward, Forfeit ten times the Value of the thing given, half to the Queen, half to the Prosecutor: And shall give the treble to Soldiers for any Pay Detained from them above ten days (a). Soldiers Deserting the Queens Service may be Tried at the Sessions for Felony (b). The Justices there, are Impowered to settle the Prices for one or more Nights Quartering to Officers and Soldiers in their Marches &c: And to Fine in five Pound, such as knowingly Harbour or Conceal a Deserter, or Receive from him any Arms, Clothes or other Furniture belonging to the Queen; to be Levied by Distress by Warrant of two Justices, half to the Informer, half to the Officer the Deserter belonged to. But the Party prosecuted being found Innocent, Recovers treble Damages (c).

3. See what our Law provides against the Misbehaviour and Debording of Souldiers, *Sup.* 20
Pag. 100.

4. The standing Militia or Train-Bands are a great Security to the Government. Which in *England* are Managed by several Principal Peers

(a) 4 & 5. Ph. & Mar. c. 3. 39 Eliz. c. 17. (b) 18. H. 6. cap. 19. 3 H. 8. cap. 5. 2 Edw. 6. c. 2. 5 Eliz. c. 5. (c) 3 & 4. A. c. 16. 4 & 5. A. c. 11.

Named Lord Lieutenants in their respective Counties by Commission from the Queen; To whom divers of the prime Gentry are Deputy Lieutenants. The Justices of Peace in every County are very subservient to these Lord Lieutenants and their Deputies, by sending their Warrants to the High and Petty Constables. But Lord Lieutenants and their Deputies must not issue Warrants for Raising *Trophy-money* (a), till the Justices at their Respective Quarter-Sessions, have Examined, Stated and Allowed the Accompts of what was last Received and Collected, and Certified the same under the hands of four or more Justices (b).

5. A Militia of 20000 Foot and 2000 Horse sufficiently Arm'd, and Furnished with 40 days Provision, was Established in *Scotland anno 1663*, to be in Readiness when called for by the Sovereign, to any part of his Dominions, against Foreign Invasion, or Intestine Insurrection, or any other Service, touching His Majesties Honour and Authority, without Exempting from Rising betwixt sixty and sixteen, when called to attend the Host, conform to former Laws (c). Which Militia was Modelled by the *Act 2. Sess. 1. Act 1. Sess. 3. Par. 2. Ch. 2.* And 6 Shilling appointed to a Foot-man, 18 Shilling to a Horseman, every Day of the Rendezvous; and Colours, Standarts, Drums and Trumpets to be provided at the

(a) 1 E. 4 d. paid Yearly by House-keepers, as Train-bands, (but Charged upon the Land-lord) for the Drums and Celours &c. of their Company. (b) 4 & 5. A. c. 23. (c) Act 28. Sess. 3. Par. 1. Ch. 2.

Charge of the Respective Shires. Persons Inrolled and Employed in the Militia are not to be altered, and are free from other Levies during that Service. The Fines of Absents and Deficients are to be doubled in time of War. And the Leader of every Horse must uphold him and his Furniture seven Years,

I X.

About Weights and Measures; and Trade or Buying and Selling.

By the Law of England, any Mayor or other Head Officer of City or Borough, may be Fined at Quarter Sessions in 5 Pound to the Poor and Informer, for willingly permitting any other than the *Winchester* Measure to be used within their District, or for not Reforming unlawful Measures, and not punishing the User thereof (a).

2. By the Law of England, no Drover of Cattel, Carrier, Buyer or Transporter of Corn, Butter or Cheese, can be Licensed, except in the Quarter Sessions of the County where he (b) being a Married Man, a Householder and 30 Year old, hath Dwelt three Years. Which Licence must be Subscribed by three Justices *Quorum Unus*: Otherways the Taker thereof Forfeits 5 Pound to the Queen. And no such Licence can indure longer than one Year (c). The Justices ought to take Bond from the Person Licensed, that he shall not Forestall (d). The Justices of Peace in

(a) 22 Car. 2. c. 8. (b) For a Woman can have no such Licence.
(c) 5 Eliz. c. 12. § 4 & 5. (d) *Ibid.* § 6.

the several Counties, may at their Quarter Sessions after *Michaelmas* and *Easter*, and the Mayor, Aldermen and Justices of Peace in *London*, may in *October* and *April* Determine the Price of Foreign Corn (a). The Forfeitures and Penalties for Exporting Wooll and Fullers Earth, may be Pursued before the Quarter Sessions (b). Who may also *Cognosce* Offences in Selling and Transporting Leather (c) : And Offences against the 31 Eliz. c. 12. concerning the manner of Selling and Tolling Horses in Markets and Fairs.

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3. Here in *Scotland*, the Importation and Retention of Foreign Victual was discharged under pain of Sinking and Destroying the same, Confiscation of the Vessel to the use of the Seizer or Discoverer, and 1200 Pound of Fine ; to be divided equally betwixt the Sovereign and the Discoverer (d). Which Prohibition is Ratified by the sixth Article of the Union. Justices of Peace are also Competent to Judge Contraveeners of the Act 9. Sess. 9. Par. W. Discharging the Exportation of Wooll, or Skins with Wooll upon them.

X.

Concerning Crimes.

Delicta are divided by the Civil Law, into *Privata*, whereby particular Persons are more immediately prejudged ; & *Publica*, properly called Crimes, which tend directly to the preju-

(a) 1 J. 2. c. 9. (b) 14 Car. 2. c. 18. 7 & 8 W. 3. c. 28.
(c) 1 J. c. 22. § 50. 14 Car. 2. c. 7. § 10. (d) Act 3. Sess. 3.
Par. 2. Ch. 2. Act 14. Sess. 2. Par. J. 7.

dice of the Common Wealth. And for punishing these the more effectually, Jurisdiction is Lodg'd in several kinds of Judges: Sometimes *Cumulative*, when two are Competent to Judge the same Crime, and may prevent one another by first Attaching; Sometimes *Privative*, when one has the Sole Power of Judging, Exclusive of all others.

2. By the Law of *England*, Justices of Peace have Authority to Hear and Determine at the Quarter Sessions; all Felonies not excepted by Statute (a). And the Commission of the Peace carries exprefs Powers to Judge Felonies, Witchcraft, Inchantment, Sorcery, Magick Arts, Forestalling, Regrating Ingrossing, Extortion, Conventicles, &c. according to the Law of *England*. Provided, that in case of Difficulty, one of the Justices of either Bench, or Justices of Assize in the County, Sit with two or more of the Justices of Peace. But they cannot proceed to Judge of Treason, Misprison of Treason, or *Premunire*. All they can do in such Cases, is only to Examine and Commit the Offenders, take Information against them, bind over the Informers and Material Witnesses by Recognizance, to appear and give Evidence before the Competent Judges (b). They may also Enquire of Falsifying the Queens Coin, and make out

(a) 18 *Edw.* 3. c. 2. 34 *Edw.* 3. c. 1. 17 *R.* 2. c. 10.

(b) *Dalt.* Ch. 40. 141, 142.

Process by *Capias* (a) only against such as are thereof Indicted before them (b). And the Commission of the Peace Authorizes them to Inquire concerning Sheriffs, Bailiffs, Stewarts, Constables, Keepers of Goals and other Officers who behave themselves unduly, meanly, remissly or negligently in the Execution of their Offices.

3. The Commission of the Peace in *Scotland* carries the like Powers of Judging Felony, Witchcraft, Inchantments, Magical Arts, Sorcery, Forestalling, Regrating, Ingrossing, Extortion, Conventicles, conform to the Laws of *Scotland*: Provided that in case of Difficulty our Justices of Peace proceed not to give Judgement, except in the Presence of one of the Lords of Justiciary, or one of the Justiciary holding the Circuit Court in the County. They may in like manner by Precognoscing these other Crimes, make prepa-

(a) *Capias*, is a Writ of two kinds. One before Judgment, called *Capias ad Respondendum*, where the Sheriff upon Original or other Writ in a Personal Action, Returns *Nihil habet in balliva nostra*. The other is a Writ of Execution after Judgment, also of several sorts: As *Capias ad Satisfaciendum*, a Writ commanding the Sheriff to take the Body of him against whom a Debt is Recovered, to commit him till he make Satisfaction; *Capias pro Fine*, an Order to Apprehend and Commit one to Prison till he pay a Fine inflicted on him by Sentence; *Capias ut Legatum*, a Warrant to the Sheriff to Apprehend a Party Outlawed for not appearing upon the Exigent, and to keep him in Custody till the Day of Return, and then present him to the Court, there to be further punished for his Contempt. *Exigent*, is a Writ that lyes where the Defendant in a Personal Action cannot be found, nor any thing of his within the County to be Attached or Distrained, directed to the Sheriff to call him five County Days *Successive*, to appear under pain of Outlawry. *Capias condempnos ad Proficiendum*, an Original Writ directed to two of the Queens Serjeants at Arms, to Arrest and take any Souldier that hath Ingaged to Serve in Her Majesties Army, and appears not at the time and place appointed, and to bring him *Coram Concilio Nostro*. (b) 3 H. 5. c. 7.

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tatory Work in order to a Trial before the Commissioners of Justiciary, and commit the Malefactors (a). The Commission of the Peace doth also expressly injoin our Justices to look into the Misbehaviour, Remissness or Negligence of Sheriffs, Stewarts, Baillies, Constables, Keepers of Prisons and others in their Offices.

4. It will be proper here to Explain particularly such of the foresaid Crimes as the Justices of Peace are Competent to Hear and Determine.

I.

Of Witchcraft, Sorcery or Necromancy.

It is not to be Expected that I should in this little Treatise handle the Debate concerning the Existence of Witches, which hath been too much kept up by *Wierus*, and their other Patrons; whose Arguments are sufficiently taken off and Confuted by a Royal Author [b], and two of our own Eminent Lawyers (c); not to mention Foreigners. I shall only shew in my way, what course the *Scots* and *English* Laws do take with this Crime of the first Magnitude.

2. By the Law of *England*, who Invoke or Conjure, Consult, Covenant with, Intertain, Employ, Feed or Reward any Evil Spirit, to any intent or purpose, take up any dead Body, or the Skin, Bone or any part thereof, to be used in

(a) *Vide Sup.* page 42. (b) K. J. 6. in his *Demonologia*.
(c) S. G. Mackenzie, *Crim.* Part 1. Tit. 10. S. F. Grant in his *True Narrative of the Sufferings and Relief of a young Girl molested by Evil Spirits and their Instruments in the West.*

any manner of Witchcraft, Sorcery, Charm or Incantment; or use any such unlawful Art to Kill, Destroy, Consume or Lame any Person; are liable to the pain of Death, without Benefit of the Clergy and Sanctuary. And who take upon them by Witchcraft, Incantment, Charm or Sorcery, to discover any Treasure or where things Lost or Stollen are; or to provoke any Person to unlawful Love; or to destroy, wast or impair any Persons Cattel or Goods; or to hurt or destroy any Person, tho without effect; are to suffer a whole Years Imprisonment without Bail, and once every Quarter of the said Year stand six Hours upon the Pillory, in some Market on a Fair or Market Day, openly Confessing their Error and Offence for the first time; And for a second Offence of that nature shall die as Felons, without any Privilege of Clergy and Sanctuary. But the Wives of Offenders in any manner foresaid, are not prejudged of their Titles of Dower, nor their Heirs of their Rights of Inheritance and Succession (a).

3. Witchcraft, as a complex Crime including the grossest Heresy, Blasphemy and Treason against GOD, and usually accompanied with Murder, Poisoning, Bestiality and other horrid Abominations, is by our Law justly Punishable with Death (b): According to the Word of GOD (c), which allows not a Witch to live. To which Punishment, not only the Practisers of Witchcraft, Sorcery or Necromancy, but also those who abuse People, by pretending to have

(a) 1 J. c. 12. (b) *As 73. Par. 9. Q. Mar.* (c) *Exod. 22. v. 18.*

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also be dissolved, and lose their Privileges [a]. Labourers and Artificers undertaking any Piece of Work by the Great, and departing before the same is ended, without Licence or other Lawful excuse; may be Imprisoned for a Month without Bail, and Fined in five Pound to the Master or Owner of the Work [b].

6. Our Law provides, That no Workman undertake more Work than he is able to fulfill. And where any fails to perfect his Work, another who is free of other Mens Work, refusing for just Wages to do it, is punishable at the Queens will [c]. And where a Craftsmen delays to end a Work he begun, others Free or Unfree may be taken to Complete it for him. And Tradesmen obstructing the same, lose their Freedom [d].

VII.

For Securing the Government against the Plots and Machinations of Persons dangerous and disaffected thereto.

For Security of the Government, all Officers Civil and Military in *Scotland*, who have formerly been

(a) 2. *Edw. 6. c. 15.* For tho it be Question'd by some Lawyers, if a Collective Body, such as a Burgh or Incorporation may commit Crime: Incorporations are some times charg'd with Crimes Committed by their Rulers *l. 9. § 1. ff. Quod metus causa*, where the Body of the People concurs. And several Towns have for Treason been Condemn'd to be Raz'd and Plowed. But it seems reasonable, that where an Incorporation is Fined for the Deed of their Managers, these Actors should pay the whole on't. *Arg. L. 1. pr. ff. de Magistrat. conven.* For they were not Impower'd by their Election to commit Crimes. (b) 5 *Eliz. c. 4. § 13.* (c) *Act 30. Par. 5. J. 1.* (d) *Act 1. Par. 7. J. 5. Act 4. Par. 19. J. 6.*

in use to take the Oath Allegiance, and Subscribe the Assurance, in any other Court or Place than the Privy Council, are obliged to take the Oath of Abjuration at the Quarter-Sessions of the Peace, within three Months after their Admission into Office: otherwise they Forfeit their Office; and for continuing to Officiate thereafter, Forfeit 500 Pound, lose *personam standi in judicio*, and are rendered incapable to be Tutors or Executors, or to be in any Office, or to receive any Gift or Legacy. Two Justices *quorum unus* should at the Quarter Sessions give up a List of such as refused to take the said Oath when tender'd to them, as suspected of Disaffection to, or Design against the Government, to be Recorded there, and Certified by the Clerk of the Peace, to the Court of Session, to be entered in their Books. And if the Recusant do not within the next Session, after his Refusal there, Solemnly take the said Oath, and Indorse his so doing upon the return'd Certificate: He shall be Judged and Punish'd as a Popish Recusant Convict (a).

2. By the Law of *England*, The Justices of Peace in their Quarter-Sessions, may inquire of Persons Maintaining or Extolling the Authority of the Church of *Rome*, within any of the Queens Dominions, or their Counsellors, Aiders or Assistants, and should certifie the same, under the pain of 100 *lib.* to the Queens Bench, within 40 Days after Information, if in Term time, and if not, the first Day of the next Term (b). Popish

(a) 6. A. c. 14. *Jurisd.* 13: & 14: *W.* 3: c: 6: § 6. (b) 5 *Eliz.* cap: 1: § 3.

Recusants Convict may be depriv'd of their Arms and Ammunition, by Warrant of four Justices of Peace at the Quarter-Sessions: And yet be Charged to the Militia, according to their Ability (a). The Justices are Impowered at their Quarter-Sessions, to Gratifie the effectual Discoverer of Conceal'd Arms, Gun-Powder, or Ammunition belonging to Popish Recusants, with the full value thereof; and the Penalty of the treble value of Horse or Arms conceal'd, or hindered to be Search'd for and Seiz'd to Her Majesties Use, is to be appris'd at the Sessions (b): A Popish Recusant 18 years of Age, refusing the Oath of Allegiance tender'd to him in the General Sessions, incurs the Penalty of *Premunire*, except Women *Convert*, who are only to be committed without Bail, till they take it (c). The Justices in their Quarter-Sessions may deface Popish Records of great Value (d). Such as hold the taking of an Oath in any Case to be unlawful, or wilfully refuse to take an Oath duly Tender'd, or dissuade others from taking it, may by the said Justices be Fined in a Sum, not exceeding five Pound for the first Offence, and in a Sum not exceeding ten Pound for the second (e). Dissenters having Refused the Oaths of the Government, offered to them by a Justice of Peace, and persisting in their refusal upon a second tender thereof at the Sessions; are to suffer as Popish Recusants (f).

(a) 2 J. cap. 5. § 27 & 29. (b) 1 W. & M. cap. 15. (c) 3 J. c. 4. § 14; 7 J. c. 6. § 26. (d) 2 J. cap. 5. § 26. (e) 13 & 14. Car. 2. c. 11. § 2. (f) 1 W. & M. c. 18. § 12.

3. See how the Government is secured by our Law against Papists, *Sup. P.* 94; 95, 96. And what case Dissenters from the present Establishment are in with us. *Ibid.*

VIII.

Concerning Recruits to Her Majesties Forces; The keeping the Soldiery in good Order; and the Militia.

The Justices or other Magistrats should at the general Sessions of the Peace, Exhibit an Account under their Hands, of the names of Persons Listed by them as Soldiers out of Sessions, the Time when, Place where, and Officers who Received them: to be kept by the Clerk of the Peace, who must Transmit attested Copies thereof within 30 Days to the Office of the Secretary of War, to be compared with the Muster-Rolls. And even where no such Accompts are given in to the Clerk of the Peace, he must signifie so much to the Secretary at War, under the pain of ten Pound, half to the Queen, half to the Informer (a). When there are Orders for Pressing Men to Serve in Her Majesties Fleet, the Justices are obliged at their Quarter-Sessions, to Exhibit the like Accompt, concerning those taken up by them, and the Officers and Conductors concerned in the Delivery, to be kept by the Clerk, who transmits Copies within so many days to the Lord High Admirals Secretary (b).

(a) 6: A. C. 10. (b) 4 & 5. A. C. 19.

any such Craft or Knowledge, and such as consult with either, are equally liable (a): And the Doom or Sentence of such Criminals, is to be Worried at the Stake and Burnt.

4. Kirk-Sessions use to inquire into such Offences as Matters of Scandal, by taking the Depositions of Parties and Witnesses; but should proceed therein Warily and Circumspectly. For severals have been Burnt as Witches upon their Confessions Emittted before Kirk-Sessions (b): Albeit it be much Contraverted, if a Judge who is Competent to Punish Corporally, may proceed upon a Confession Emittted before an Incompetent Judge (c).

5. Articles Relevant to infer the pain of Witchcraft, are 1. Express Paction to serve the Devil, made with him or his Agent or Proxie, by one knowing him to be the Devil. 2. Using the Words or Signs of Sorcerers, knowing them to be such by their Books or Discourse. 3. Renouncing Christian Baptism, and taking new Names. 4. A Persons getting with his consent the Devils Blew Mark upon his Body, which useth to be Discovered by the uncertain Trial of Pricking. 5. A Malefice (d) following upon Threats to do Mischief. Tho many Lawyers are of Opinion, that this is not relevant *per se*, without condescending upon means used necessarily, inferring such a Malefice. But seing Men can-

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(a) Which is agreeable to the Civil Law. L. 5. C. de maleficiis & Mathem (b) Mackenzie Ibid. § 23. (c) Ibid. Part 2. Tit. 24. (d) Malifice is a Term used with us in no other Crime but Witchcraft; and signifies any kind of Hurt or Damage, arising from the unlawful means used by Sorcerers.

not know exactly the efficacy of natural Causes; some Superstitious unaccountable Acts are justly Discharged as Charms, under the pain of Witchcraft: Whatever Pretext they be used upon, or to whatever End, Good or Bad (a). 6. Professing Skill in Necromancy, as pretending to foretell things to come, or discover things lost by the Book, and by the Sieve and the Shear: tho really the Pretender hath no such Knowledge. But Ignorance or Jesting does sometimes Excuse such forbidden Practices (b). 7. Consulting with Witches, or pretenders to Witchcraft. But some are of Opinion, that it is not unlawful to such as are Bewitched, to desire the Bewitchers to take off the Charm, if it can be Removed without a new Application to the Devil. 8. Diffamatio, or the being Delated by other Witches, joyned with other Articles irrelevant *per se*.

6. The Ordinary Probation of Witchcraft, is either by Confession or by Witnesses. In the case of Confession, it should be diligently adverted, if the Person who Emits it be not weary of Life, or oppressed with Melancholy. And albeit *non Requiritur hic ut constet de corpore delicti*; yet the qualification of the Crime ought not to contain any thing impossible or improbable. When Recourse is had to Probation by Witnesses in this Crime, the same being very difficult: Persons injured by Witches are admitted to Witness against them; tho sometimes only *cum nota*, when the Probation is not otherwise Scanty.

(a) *Perez. in Cod. Lib. 9. Tit. 18. N. 3 & 4.* (b) *Delrio. Disq. mag. Lib. 4. c. 2. § 3.*

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Women are also habile Witnesses in this case. Yea, even *socii Criminis*, or other Confessing Witches, are allowed to be adduced; tho many such concurring Depositions be not sustained to prove *per se*, but only to Adminiculate and Fortifie other Probation. And yet the Witchcraft cannot be prov'd *per socios Criminis* Solely: Sir George Mackenzie inclines to think (a), That the Crime of Consulting Witches, may be prov'd by two Witches that were consulted: there being no other possible way to prove it.

II.

Forestalling, Regrating, and Ingrossing.

By the Law of England, Who Buy or Contract for things coming by Land or Water, to be Sold in a Market or Port, or advise to inhance the Price thereof, or influence Persons coming to a Market or Port for Sale to go back with their Things, is a *Forestaller*. And he who Buys in a Market, Corn, Wine, Butter, Cheese, Candles, or dead Victuals brought there to be Sold, and Sells it again there, or in any other Market within four Miles, is a *Regrater*. And he who Buys or Contracts for any Corn, Butter, Cheese, Fish, or other dead Victuals, in order to Sell the same, is an *Ingrosser*. And the Person found by the Quarter-Sessions of the Peace, guilty of any of these three Offences, shall for the first Fault be Imprisoned, two Months without Bail, and

(a) *Crim. Part. 1. Tit. 10. § 24.*

Forfeit the value of the things so Bought by him; for the second shall lose the Value of these Goods, and suffer half a Years Imprisonment without Bail; and for the third Offence, shall Forfeit all his own Goods, and be set on the Pillory, and committed during the Queens Pleasure. Again, where one having abundance of Corn, for Provision of his Family, and Sowing his Ground, Buys Corn in a Market for change of Seed, without bringing so much Corn to Sell there, Forfeits the double Value. But these Offenders cannot be Fined or Punished, unless Pursued within two Years after Commission of the Offence. But the Buying, without Forestalling, Barley or Oats to be made Malt, Dried or Salted Fish, Provisions for a City or Ship, or the Buying by Fishmongers, Butchers, Poulterers, things belonging to their Trade to be Sold by Retail, is not unlawful (a).

2. Our Law, Furnisheth us with the same Notions of Forestalling, Regrating, and Ingrossing, that they have in *England* (b): But these Crimes are generally Confounded by our Custom, and go promiscuously for one and the same. Whereof there are these several Branches. 1. The Buying up Corns or other Commodities, in order to a Dearth. Which evil design may be infer'd from a Persons offering to buy all the Goods of a Kind, and dealing with the Sellers, not to let others have any of them; or from such an universal Buyers giving extraordinary Prices; or his boasting that himself only had such Com-

(a) 5 & 6. Edw. 6. c. 14. (b) *Vid. Part. i. Pag. 6.*

commodities to Sell. 2. The Buying of Goods coming to a Market before they arrive at it ; or the Buying in a Market before it is Proclaimed, with a Pernicious design against the Common Good. 3. Advising Sellers to lighten the Price, or dissuading to come to any particular Market. 4. Buying Commodities industriously to Sell them again in the same Market, or in any other Market within four Miles thereof. 5. Buying or Bargaining for Growing Corns.

3. This Crime is Punishable by 40 Pound of Fine for the first Fault, 100 Merks for the second, and Escheat of Moveables to the Queens use for the third (a). Which Confiscation of Moveables, may be inferred from the third Fault, tho the Pannel was not convict for the first two : Because, neither Her Majesty could be prejudged, nor the Offenders Guilt purged by negligence to Pursue, besides that Fines and Punishments ought to be Commensurate.

4. But tho this Crime be so odious, that a Libel upon Forestalling in General would be sustained (b) ; whereas *Regulariter* Crimes should be particularly Libelled, with a Condescendence of Time and Place, Way and Manner, for hindering Assizers to judge matters of Law ; And tho Forestalling be an Offence frequently Committed ; yet it hath been seldom Punished.

*particular
mention*

(a) *Ass 148. Par. 12. J. 6.* (b) *Ibid.*

III.

Extortion.

Extortion or Oppression, is a General Term to signify a Crime committed by Violence: and hath been already spoke to by hints (a).

2. By the Law of England, 'Tis Extortion for any Officer to take other or more Fees, that are allowed by Statute or Custom, Punishable at the Sessions of the Peace by Fine and Imprisonment (b): It is also Extortion for a Sheriff, Bailiff or other Officer, to carry any Person in his Custody, to Tavern or Ale-house; so as to put him to Charges against his will; or to exact more than is Reasonable for his Lodging and Expences (c).

3. By the Law of Scotland, Tradesmen Exact- ing Custom from those of their own Craft, con- ing to the Weekly Market, shall buy their Life as Common Oppressors (d): I. E. be forced to take Remission for so doing. 'Tis also Oppression for Craftsmen to make or use Statutes among themselves prejudicial to the Common-Wealth: as that none end the Work begun by another (e) &c. Which pernicious Practice is not only Condemned and Punished by our Law; but also by the Civil Law (f), and by the Laws of all Nations as a kind of Monopoly (g): For otherwise Tradesmen might

(a) Part 1. Pag. 28. Part 2. Pag. 40. (b) 23 H. 6. c. 10. 21 H. 6. c. 5. 22 & 23 Car. 2. c. 23. (c) 22 & 23 Car. 2. c. 20. § 9. (d) Act 42. Par. 4. f. 4. (e) Act 43. Ibid. (f) L. un. C. de Monopoliis &c. (g) Fritsch de Monopoliis. cap 12.

Extortion People at their Pleasure. The Extorting more Fraught from Passengers (a), or greater Prices for Craftsmens Work, than is usual and allowed (b); Stopping or Obstructing Common High-ways to or from Burghs (c); And the Extortioning the Lieges by the Queens Officers (d); are Punishable as Oppression. But then the Punishment of this Crime is sometimes Arbitrary (e); Sometimes Capital (f). And somethings that were formerly Punishable by the Justiciary as Common Oppression, are now redress'd by Actions of Molestation, or Declarations of Property before the Session, or Actions of Riot before any Judge Competent; such as the molesting Magistrates and Merchants in Burghs, in the use of their Liberties (g).

4. *Vis publica & Privata, & Concussio*, are Crimes in the Civil Law, answering to Oppression in our Law: And the taking of Black-mail (h) is a sort of concussion with us; for which both the Giver and Taker are Punishable by Death, and Escheat of Moveables (i). The reason for making the givers liable is, because they Maintain and Correspond with the Robbers, without Informing against them. But yet a Criminal Label would not be sustained against the givers of Black-mail,

(a) Our Justices of Peace are expressly appointed to oversee the ferries, and cause the Lieges be well served at easie Rates. *Part 1. ag. 19, 20, 21* (b) *1st 21 & 23. Par. 5. Q. M.* (c) *AB 3. Par. 6. M. AB 156. Par. 12. J. 6.* (d) *AB 34. Par. 5. J. 3. AB 83. Par. 1. J. 6.* (e) *d. AB 34. Par. 5. J. 3.* (f) *AB 42. Par. 4. J. 4. AB 3. Par. 11. J. 6.* (g) *AB 27. Par. 4. J. 5.* (h) *I. E. the paying of money or any gratuity to Thieves for their protection.* (i) *AB 21. Par. 1. AB 102. Par. 11. J. 6.*

164 *The Duty and Powers of*
without qualifying something of Compliance,
or long use of Payment [a].

I V.

Conventicles.

I have already Spoken of Riots [b], Routs,
and unlawful Assemblies [c], according to the
Law of England. And Explained wherein that
differs from ours in the matter of Riots [d].

2. By our Law, such as ordinarily Travel
with unusual Trains, are liable to an Arbitrary
Punishment [e]. Sedition or Unwarrantable
Convocation of the Leiges, is Punishable by
Confiscation of Moveables, and the Offenders
Lives fall in the Sovereigns will [f]. And all
Leagues and Bonds made among the Queens
Subjects without Her consent, are Discharged
under the pain of being Holden and Execute as
movers of Sedition, and Pursued with all Ri-
gour [g]. Yet simple Convocation of People,
is seldom Punished with us as a Crime of it self,
but only as an Aggravation of a Riot, or some
other Crime [h]. And Convocations are allow-
ed in some Cases, as for Pursuing Theeves and
Sorners [i]. And any Person in England, may
in a Peaceable manner Assemble a convenient
number of People to abate a Nufance [k].

(a) *Mackenzie Crim.* part 1. Tit. 34. in fine. (b) *pag.* 26. (c) *pag.* 25. (d) *pag.* 26. & seqq. (e) *Att* 5. par. 1. *J.* 1. (f) *Att* 77. Par. 14. *J.* 2. (g) *Att* 12. Par. 10. *J.* 6. *Att* 4. *Sess.* 1. par. 1. Ch. 2. (h) *Mackenzie Crim.* part 1, 195: 7. (i) *Att* 227. par. 14: *J.* 6: (k) *Dalt.* 98.

CHAP. IV.

Concerning Appeals from Private Justices of Peace, to the Quarter-Sessions. And what Checks the Sessions Proceedings are liable to.

FOR Redressing Persons wronged by the Iniquity or Ignorance of Judges, the Method of Appeals was Introduced, for carrying Causes from an Inferior to a Superior Judge, as Supposed to be a Person of more Knowledge and Honour. And tho the Justices of Peace singly considered are *pares, qui in se invicem non habent imperium*; yet a Solemn Meeting of them in a Body at the Quarter-Sessions, is a Superior Court, to which Private Justices must Answer, and Account for what they do by themselves in their Inferior Capacity out of Sessions.

2. By the Law of *England*, There lies an Appeal to the Sessions in favours of the Persons following, 1. A Seller of Butter Fined by a Justice of Peace, for altering the same with worse after the Cask was Marked by the Buyer (*a*). 2. The Mother or reputed Father of a Poor Bastard Child, charged with a Weekly Payment to the Churchwarden for his Maintenance, and punished by two Justices of Peace *Quorum Unus*. But if the next Sessions don't Decide therein, the Sentence

(a) 4 & 5: W: & M: cap: 7.

Appeal'd from is valid (*a*). 3. Persons Lefed by the Sentences of Private Justices of Peace, putting in Execution the Laws for preserving the Game (*b*). 4. One finding himself prejudged by the Sentence of two Justices, Fining him for not accepting of an Apprentice; or one prejudged by their Order for Removing a Person out of the Parish (*c*); or one grieved by Taxation or Act for Relief of the Poor, done by the Overseers or private Justices of Peace (*d*). 5. Persons Lefed by an Assessment, or Rate or other Act of Justices of Peace in Special or Petty Sessions concerning Highways, Causeys, Pavements, or Bridges (*e*). 6. Quakers or other Persons grieved by Extra-judicial Orders to pay their Tithes (*f*): Which the Clerk of the Peace should Inroll for one Shilling (*g*). 7. In *London* and within the Bills of Mortality there lyes an Appeal from the Commissioners of Excise, to the Commissioners of Appeal: But no Appeal seems Competent in Excise matters without the Bills of Mortality, or in *Scotland*, from the Sentence of two or more Justices of Peace (*h*).

3. In the foresaid Cases of Appeal the Judgment of the Sessions is final. But because the Benefit of Appealing is often abused to Evil purposes, and made a Handle to delay People from getting access to what justly belongs to them: The Appellant must give Bond and Caution to pay the other Parties Expenses, in case the Appeal

(*a*) 18 *Eliz.* c. 3. 7 *J. c.* 4. § 7. (*b*) 22 & 23 *Car.* 2. c. 25. § 9.
 (*c*) 8 & 9 *W. 3.* c. 30: § 5 & 6. (*d*) 43 *Eliz.* c. 2. § 6. (*e*) 3 & 4
W. & M. c. 12. § 1. (*f*) 7 & 8 *W. 3.* c. 34. § 4. 13 & 14 *W. 3.*
 c. 4. (*g*) 7 & 8 *W. 3.* c. 6. 3 & 4 *A. c.* 18. (*h*) Part I. page
 61, 62.

be found at the Sessions to have been unjust [a]. For *Regulariter Victus victori condemnandus est in expensas, nisi habuerit probabilem litigandi causam* [b]. Yet it must be owned at the same time, that a righteous Sentence is sometimes perverted by the Court of Appeals. *Nonnunquam enim bene latas Sententias in pejus reformat; neque utique melius pronunciat qui novissimus Sententiam laturus est* [c].

4. As any wrong Steps made by private Justices of Peace in the Instances above mentioned, may be got Rectified at the Sessions: So with us Judges of Regality have Power to Repledge even from the Sessions, in Riots and Bloodwits [d]. And were found without using that Privilege, to have Right to the Amerciaments and Fines of Persons Judged within their Regality, by the Justices of Peace [e]. Nor are the Justices of Peace at their most solemn Quarterly Meeting, left absolutely to Judge always by themselves. For the Commission of the Peace Restrains them in England from proceeding to Determine in Cases of Intricacy, without the Concurrence of one of the Judges of the one Bench or the other, or one of the Justices of Assize in the County. And our Justices of Peace are tied up by their Instructions, from Discussing difficult matters, without the Presence of one of the Lords of Justiciary, or one of the Circuit Judges, as Assessor. Which seems to confirm what is Advanced *Supra Chap. 1. §. 5.* concerning the Removing of Causes from Justices of Peace by Advocation; and the Rectifying their Sentences by Suspension, and Reduction.

(a) 4 & 5 W. & M. c. 7. &c. (b) *Ad 43. Par. II. J. 6.* (c) *L. 1. ff de Appell.* (d) *Mackenzie, Crim. Part 2. tit. 11, n. 6.* (e) *July 22 1664, Earl of Sutherland contra Mackintosh of Conaage.*

C H A P. V.

Concerning Constables, and other Inferior Officers of the Peace.

SOME Justice of Peace-Warrants being directed to Constables, some to Constables, Head-Boroughs, or Tithingmen; some to Church-wardens; some to Constables and Church-wardens; some to Constables or Church-wardens, &c. I thought fit to add something concerning the Business of these Inferior Ministers of the Peace.

S E C T. I.

Of Constables, Head Boroughs, Tithingmen and Church-wardens in General.

IT was antiently Ordained in *England*, That in order to the better keeping the Peace, and suppressing Theft and Robbery, Men should enter into Societies or Companies by tens with their Families, and oblige themselves for each others peaceable and good Behaviour. Which Companies in some places of *England* are called *Boroes* from *Borhes*, signifying Pledges, because they were Sureties or Pledges for their Fellows; And in the Western parts are called Tithings, for that they consisted of ten Families. It being found convenient for ten of these Companies to meet at certain times, to Consult of matters of

Impor-

Importance; That General Assembly was called an *Hundred*, and sometimes a *Wapentake*, because of their touching a Weapon when they Swore Allegiance. The Chief or Principal Person of these *Tithings* or *Boroes*, was in some places called the *Tithing-man*; In others *Boroes Elder* now *Borsholder*. Again, in some places he was called *Borohead* or *Head-Borow*; And in some the *Chief-Pledge*. And where every *Third Borow* hath a Constable, the Officers of the other two are called *Third-Borows*. A Constable was Chosen in each Hundred to keep the Peace, to view Arms twice a Year, to present before Justices of Peace default of Armour, Watches, Highways, Hue and Cry, and such as Lodged Strangers for whom they would not Answer. As Offences multiplied, Inferior and common Constables called *Petty-Constables*, were Named in every Town about the beginning of the Reign of *Edward 3d*, for the Assistance of Constables of the Hundreds, who were called *High-Constables*, in Opposition to those *Petty Town Constables*. But the old Discipline of *Boroes* and *Tithings* having ceas'd long ago, *Borsholders*, *Tithingmen* and *Head-Borrows*, are generally used but as Petty Constables within their own Borows and Tithings. The High Constables disperse Justice of Peace-Warrants and Orders to each Petty Constable. Every Constable should be *Idoneus homo*, a Man of Honesty, Knowledge, and Ability (a).

2. By our Law (b), Constables two or more are to be appointed from six Months to six Months in every Parish or great Town not being a free

(a) *Dalt. ch. 28.* (b) *Vide Part I. page 11.*

Burgh, by the Justices of Peace in their Quarter-Sessions; and in Royal Burghs by the Magistrates. And our Constables are all of one Kind.

3. By the Law of *England*, Some are Exempted from Serving in the Office of Constable: As Attorneys of the Common Pleas [a], Parliament-men's Servants [b], and Apothecaries [c].

4. Constables Lawfully Chosen refusing to accept, may be bound over by a Justice of Peace to the Sessions, where they may be Indicted, Fined and Imprisoned for their Contempt [d].

5. A Constables Authority is partly intrinsic and Inherent in his Office, and partly flows from the Command of Justices of Peace or other Superior Officers, whose Precepts and Warrants he is bound to Execute.

6. A Constable may make a Deputy (e). And where he, or other such Officer of the Peace, hath Arrested an Offender that ought to be Committed to the Gaol; he is not bound further to carry him thither, But may for a reasonable time secure him in the Stocks, until he hath procured a convenient Assistance for his safe conduct. And Jailers ought freely to receive Offenders brought to them by Constables, without requiring any thing from the Constables upon that account [f]. A Constable is not to Dispute the Authority of a Justice of Peace Warrant, if in a Matter the Justice was competent to Cognosce: But must Execute the same Implicite-

(a) *Cro. Car.* 389. *Noy* 112, 113. (b) *Per Twissden Mod. Rep. F.* 13. (c) *Y. A. c.* 11. (d) *Vide Part 1. Page 11 Dalt. c.* 28. (e) *Ibid.* (f) *Lambard. Duties of Constables &c. pag.* 18.

ly, upon the Peril of the Granter. Yet the Constable is Punishable for Executing an Order of a Justice of Peace, exceeding his Jurisdiction [a]. He cannot be Pursued out of the Shire where he is Constable, for any thing done in the Execution of his Office [b]. And being out of Purse in the Exercise of his Office, should be reimbursed by an Assessment on the Parish [c].

7. The Law of *England*, Assigns particular Rewards to Constables for particular Services, which are mentioned in their proper places. But our Law provides only in General, that they shall be paid for their Labour out of the Fines; and by the Lords of Exchequer when these fall short [d]. Constables may be Fined by the Sessions of the Peace, for Malversation or Negligence, in the Exercise of their Office; Where all Constables by the Law of *England* ought, to Attend; And by our Law, one at least from each Parish should attend in name of the rest [e].

8. Constables are Removable for a just Cause, by the same Authority they were Chosen. And by the Law of *England*, in case of the Death of Constables, or their Removal out of the Parish, two Justices of Peace may Swear new ones, to continue till the next Sessions [f].

9. Church-wardens [g] are Officers Yearly chosen in *Easter Week*, by the consent of Minister and Parishoners, according to the Custom of several Places; to oversee the Church, Church-Yard, and their Pertinents; to observe the Be-

[a] Dalt. Ibid. [b] Styles 393. [c] Dalt. Ibid. [d] art 1. pag. 12.
[e] Ibid pag. 11 [f] 14 Car. 2. cap. 12. § 15. [g] I. E. economi vel
Ecclesia Guardiani.

The Duty and Powers of
 haviour of Parishioners; and Authorized by Law
 to Pursue for any thing belonging to the Church
 or Poor of their Parish. In greater Parishes they
 have certain Assistants, called *Testes Synodales*
 or *Sides-men*, Corruptly for *Synodf-men*;
 and are Served at Church by the *Sacristan*, or
Sexton.

S E C T. II.

*The Particular Duties and Powers of Constables and
 other Inferior Officers of the Peace.*

These particular Duties and Powers Concern 1.
 Breaches of the Peace against Private Persons,
 or what hath a Tendency to it. 2. Immorality
 and Prophaneness. 3. Charitable and Pious
 Works. 4. The Publick Policy, Security and
 Government,

I.

*What they are to do for Maintaining the Peace to-
 ward Private Persons.*

For Maintaining this Peace, they are to see
 1. That nothing be done that hath a Mediate or
 Immediate Tendency to an Infraction thereof.
 2. Their Business is to quiet and pacifie such as
 are Breaking the Peace, and to Chastise those
 who have broke it.

2. They may Arrest or Seize Suspected Persons
 that Walk in the Night and Sleep in the Day,
 who cannot give a good account of themselves;
 or those that keep Suspicious Company; and
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and may call others to Assist them (a). A Person that ought to Watch, refusing so to do when Commanded by the Constable, may be set by him in the Stocks, or complained of to a Justice, who shall bind him to the Sessions (b). By the *Stat. North 2 Edw. 3. cap. 3.* Any Person (except the Queens Servants or their Assistants, or upon Hue and Cry made to keep the Peace) Riding or Going Arm'd in Fairs or other Places, may be Disarmed by a Constable, and Committed to Jail. By our Law (c); Constables may Apprehend Yemen wearing Hagbuts, Pistols and Daggers. And upon complaint of a Person threatned with Death by another, may Arrest the Threatner, and carry him with the Complainer to a Justice of Peace; And for his Refusal to go, may throw him in Prison (d). A constable seeing a Man in Fury, Resolved to beat another, may Apprehend and bring him before a Justice of Peace (e).

3. A Constable may in the case of an Affray order the Quarrelling Persons to separate and keep the Peace in the Queens name, and commit them upon their Refusal, till they find Surety, or may carry them before a Justice. If they Resist, he may Require Assistance, and can justify the Hurting of them in the Exercise of his Office. If an Affray be within close Doors, the Constables may Force them open, to keep the Peace. And in a Fresh Pursuit of the Affrayers, may break open any Room they flee into. Yea, He may even follow them into another County,

(a) *Lambard Ibid. pag. 11.* (b) *3 Leon. 208.* (c) *Part 1. pag. 11.*
 (d) *Lambard Ibid. part 1. pag. 12.* (e) *Ioph. 13.*

and Sift them when Apprehended before a Justice of Peace in that Part. But after an Affray is over, no Constable can Arrest any of the Parties, without a Warrant from a Justice of Peace: unless some Person is Dangerously Wounded. If a Constable neglect to use his Endeavours to Suppress an Affray; he ought upon Complaint to be Fined by the Sessions (a).

4. A Constable may Imprison a breaker of the Peace in the Stocks, in the Jail, or in his House till he can bring him before a Justice of Peace (b); and would be Finable for letting him go. Yea, he may even Arrest any Person for breaking the Peace upon himself (c): And if hurt has an Action of Damages. He cannot justify the breaking any Mans House in the Night time, unless in the case of Felony (d). But in such a case, or where a Person is dangerously Wounded, he may force open Doors even under Cloud of Night to apprehend the Offender (e). Any Person in the Company of one Murdered or Robbed, may forthwith Repair to the next Constable, and cause raise the Hue and Cry after the Criminal from Town to Town, from County to County, by Horsemen and Footmen (f). And all Officers where Hue and Cry comes, must search all suspected places, and Seize suspected Persons, and carry them to some Justice to be Examined.

(a) Lambard, *Ibid.* page 14, vs. 16. *Sup.* Part I. page 11 & 12.
 (b) *Hales Pl. Cor.* Fol. 92. (c) 1 *Rolls Rep.* 238. (d) 1 *Bulst.* 146. 3 *Co.* 92. *Seymans Case.* (e) *Hales, Ibid.* (f) 28 *Edw.* 3. c. 11. 27 *Elix.* c. 13. § 10.

I L

Their Duty and Powers in Relation to Immorality and Prophaneness.

They may Apprehend or Arrest such as haunt Bawdy Houses, and carry them before a Justice of Peace, to find Surety for their good Behaviour. They may seize and carry to Prison Men and Women caught in the act of Uncleaness (a). A Constable who (having a Warrant from a Justice of Peace to apprehend the putative Father of a Bastard Child) doth willingly or negligently suffer him to Escape; may by a Justice of Peace be bound over to the Sessions, who may Fine him, or Order him to Maintain the Child (b). Constables are by Order of the Justices to apprehend despisers of Church Censure (c). And the Fines for Cursing and Sweating are to be Levied by Constables, and other Parish Officers (d).

2. By the Law of England, Constables or Church-wardens neglecting to Execute Warrants against Ale-house Keepers or Tiplers, Forfeit 40 Shillings (e). And for not Execution of Warrants against Offenders by Drunkenness, must pay ten Shillings for the Poors use (f).

I I I.

Their Duty and Powers in Relation to Works of Charity and Piety.

Constables ought to Levy Taxes Imposed by the Justices for Relief of Poor People Infected with

(a) Lambard, *Ibid* page 12 & 17. (b) Date: c. 11. (c) Part 1 page 9. in fin. (d) *Vide Sup.* p. 46 (e) 1 J. c. 9. § 4. (f) 4 J. c. 5. § 3.

the Plague: And for neglect thereof Forfeit ten Shillings *toties quoties*, to be imployed for the said Pious Use (a). The Money Assessed by the *Easter* Sessions on the Parish for Relief of Maimed Soldiers, should be Collected & paid by the Churchwardens and Constables, to the High Constable ten Days before the Sessions, under the pain of 40 Shillings (b). Constables may Assess the Inhabitants of a County within their respective Bounds, according to their Abilities, for payment of a Tax Imposed upon the County by two Justices *Quorum Unus*, for Relief of some Distressed by making up the Loss of a Person Robbed. And are to Collect and give up the Money to one of these Justices within ten days after uplifting: And may Poind such as Refuse to pay (c).

I V.

What Constables are to do in Relation to the Publick Policy, Security and Government.

By the Law of England, a Constable, Head-Borough or Tithingman, for neglect to apprehend, punish and convey Rogues found in his Parish, may be Fined by two Justices *Quorum Unus* in ten Shillings (d); And for not punishing and conveying Rogues brought to him from a Neighbour Parish, in twenty Shillings (e). Where any Vagrant Person is brought to him, he shall carry him to the next Justice of Peace, who must carefully Examine him, and as the case requires,

(a) 17. C. 31. *junct.* 16. & 17. Car. 1. C. 4. (b) 43. Eliz. C. 3.
(c) 27. Eliz. C. 13. (d) 39. Eliz. C. 4. § 5. (e) 17. C. 7. § 7.

either send him to the House of Correction, or to some Town of the next County; giving the Constable Instructions in Writ what he is to do with the Vagrant, and Taxing the Constables allowance on the Back thereof conform to the Rates set down at *Easter Sessions*; to be paid out of the Gaol or *Marshalsey-Money* [a], by the chief Constable of that Division upon Receipt, which shall be discounted to him at the next Quarter Sessions. Constables neglecting their Duty herein Forfeit 20 Shillings; whereof a fourth goes to the Informer, and the other three parts to the Poor, to be Levied by Warrant of a Justice of Peace [b]. Constables out of Purse by relieving, conveying with Passes, and carrying Rogues to Houses of Correction, may get a Warrant from two Justices of Peace, to Reimburse themselves, by Levying a Tax on the Possessors of Lands and others liable to the Poor by the Statute 43 Eliz. (c).

2. By our Law, Sheriff-Officers and Constables are required to assist towards the carrying and delivering Idle Beggars and Vagabonds to the Correction House (d).

3. By the Law of *England*, Constables, Head-wards, Tithingmen, Church-wardens, and Surveyors of the Highways, must upon the 26 December, or upon the 27 when the former falls to be Sunday, Assemble and make up a List of the

(a) *Marshalsey* is the Court of the Earl-Marshal, where he may try and Judge Criminals Offending within the Verge of the Queens Court, allowed for the Prison in *Southwark*. (b) 11 & 12 W. 3. c. 13. § 1 & 4. 1 A. Sess. 2. c. 13. § 4. (c) 13 & 14 Car. 2. c. 12. (d) 18. Par. 2. Sess 3. Ch. 2.

most sufficient Inhabitants in their respective Parishes, out of which Surveyors of the Highways for the Year ensuing may be Named; and return the same to two or more Justices of Peace at a Special Sessions for that purpose on the 3 of *January* following, or the 4 when the 3 is a *Sunday*, or within 15 days after being advertised of the holding of the Sessions by the Justices ten days before; under the Penalty of 20 Shillings upon every neglecter; to be Levied by Distress and Sale of Goods upon the Warrant of two Justices of Peace, half to the Informer, and half towards the Repairing of the Highways of that Parish (a). A Constable or Surveyor not putting in Execution the Acts about Highways, or suffering Carts to pass thro their Limits drawn with above 5 Horses or Oxen at length, and not in pairs, may be Fined by any Justice not exceeding 40 Shillings (b). Constables, Church-wardens, or Overseers of the Poor, for neglecting to Collect and Account for to the Receiver named by the Quarter Sessions, Money imposed by them upon Towns and Parishes for Repairing decayed Bridges, incurs the Penalty of 40 Shillings *toties quoties* (c).

4. A Constable or other Head Officer of a Town neglecting to put in the Stocks a Labourer Refusing there to Work for days Wages in the time of Hay or Corn Harvest, Forfeits by the Law of *England* 40 Shillings [d].

5. By the Law of *England*, Constables and Church-wardens should once every Year present

(a) 3 & 4 *W & M* c. 12. (b) 22 *Car.* 2. c. 12. § 1. (c) 1 *A.* c. 18.
(d) 5 *Eliz.* c. 4. § 22.

the Monthly Absence of Popish Recusants, the Names of their Children *in familia* aged 9 Years and upwards, and their Servants, to the Quarter Sessions; or Forfeit 20 Shillings. And for every such new Presentment whereupon Conviction follows they are to have 40 Shillings Reward (a).

6. By Acts of the Parliament of *Great Britain*, Constables are ordained to Search within their several Bounds for able Bodied idle Men, to Recruit the Queens Forces, and to bring them before the Justices of Peace; and may be Fined by two Justices in 5 Pound for wilful neglect to Execute their Warrant to seize such Persons, half to the Poor, half to the Informer, to be Levied by Distress and Sale of the Offenders Goods. They may apprehend such as they suspect to be Souldiers who have Deserted the Queens Service, and bring them before a Justice of Peace (b). Constables neglecting to Execute Justice of Peace Warrants directed to them for providing Carriages for Her Majesties Forces in their Marches, or any other Person resisting or frustrating the Execution thereof, Forfeit ~~twice~~ *twoties* ~~quoties~~ a Sum not exceeding 40 Shillings, nor under ten Shillings to the Poors use (c).

7. Constables are required upon their Peril to be assisting to the Collectors of the Queens Supply for the breaking open Doors or Chists, &c. in the Day time, for Poinding the Goods of Persons deficient in payment of their *Quotas* of the said Supply (d):

(a) 3 J. c. 4. § 4 & 6. (b) 6 A. c. 10. (c) 6 A. c. 20. (d) 6 A.

8. Constables ought to Search for Unseal'd Unlawful Measures, and break the same, and present the Haver or User thereof at the next Sessions (a).

9. By the Law of *England*, any Constable, Tithing-man, Head-Borow, Church-Warden or Overseer of the Poor within their Respective Bounds, may Seize Cattel alleged to be Imported from *Ireland* to *England* for Sale, and keep the same fourty eight Hours, till it be Tried before a Justice of Peace, if they be *Irish* Cattle (b). And for neglect to Seize such Prohibited Goods, Forfeit 100 Pound for the use of the Correction-House (c). The Seizer of such Cattle, must within six days after the Forfeiture, cause them to be Killed, and taking the Hides and Tallow to themselves, Distribute the Remainder among the Poor, under the Penalty of 40 Shilling for each Great Beast, and ten Shilling for every Sheep or Swine, to be divided betwixt the Poor and the Informer, and Levied by Distress, on Warrant of a Justice of Peace; and for want of *Distress*, the Offender suffers three Months Imprisonment without Bail (d).

CHAP. VI.

The Duty and Powers of Sheriffs, Stewarts, Lords and Baillics of Regality and Royalty.

HAVING thus Dispatched what I Designed to say about Justices of Peace, and their Con-

(a) 22 Car. 2. c. 8. (b) 18 Car. 2. c. 2. § 1. (c) 20 Car. 2. c. 4. (d) 32 Car. 2. cap. 2. § 5 & 6.

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stables; And having made frequent mention all along of Sheriffs, Stewarts, and Judges of Regality and Royalty, to whom jointly with Justices of Peace, the Execution of Laws is usually Intrusted and Injoined: I shall take occasion now to give some account of these other Conservators of the Peace, as Co-incident with the Subject in hand.

S E C T. I.

Concerning Sheriffs and Stewarts.

THE Sheriff is a Magistrate having Power over a County or Shire, for maintaining the Peace, and putting the Laws in Execution there: Answering to the *Præses Provincia* among the Romans. Were I disposed to nibble at Etymologies, the Learn'd *Skene* (a), doth afford sufficient Matter of that Kind, concerning the Word *Shire*: But it shall suffice to Observe, that *County* and *Shire* are two Words signifying the same thing: Where the Former is of *French*, and the Latter of *Saxon* Extract, a Derivative of *Scyre*, importing a Partition or Division of Lands.

I.

The Duty and Powers of Sheriffs by the Law of England.

In England, Sheriffs are now Annually Named

(a) *De Verb. signific.*

by the Queen in every County (*a*), except *Westmorland* (*b*), about the beginning of *November*, out of three Knights or Esquires of good Estates in each County, chosen by the Privy Council, out of a List of six given up by the Judges.

2. The Office of Sheriff is partly Ministerial, partly Judicial.

3. His Ministerial Function, is to Execute the Orders and Writs directed to him out of Her Majesties Courts, to Impannel Juries, to bring Causes & Criminals to Tryal, and to see the Sentences Executed, to Collect all Publick Taxes, Fines, Distresses and Amerciaments, and to bring them into the Exchequer, or wherever Her Majesty appoints. And Lastly, The Sheriff is bound with his under Sheriff, Clerks, Stewards of Courts, Bailifs of Hundreds, Constables, Gaolers, Serjeants, or Bedals, to receive, wait on, Guard and Treat the Itinerant Judges at the Assizes, with great Pomp and Splendor, so long as they continue within the County.

4. The Sheriffs Judicial Function, is to hold two different Courts, the one called the *County-court* (which is not a Court of Record) Month.

(*a*) In *England* there are four Counties Palatine; viz. the County Palatine of *Lancaster*, *Chester*, *Durham* and *Ely*. Whole Jurisdiction (tho now much Abridg'd) was of old so high, that their Chief Governours did send out in their own Name all Writs, not excepting Pleas of the Crown; and exercised Justice as absolutely as the Prince himself in other Counties, only acknowledging him their Superior and Sovereign. There be likewise Counties Corporate, which are certain Cities or Ancient Boroughs that enjoy extraordinary Liberties. These are *London*, *York*, *Chester*, *Canterbury*, *Norwich*, *Worcester*, *Kingstoun upon Hull*, *Haverford-west*, *Lichfield*, &c. (*b*) whereof the *Cliffords* are Hereditary Sheriffs by Charter from King *John*.

ly, wherein he or his Depute Hears and Determines, Civil Causes under 40 Shilling; The other called the *Sheriffs-Turn*, a Court of Record, held twice a Year, within a Month after *Easter*, and as long after *Michaelmas*, for inquiring of all Criminal Offences against the Common-law, where he is not Restrained by Statute: from the Jurisdiction whereof Peers, and such as have the Privilege to keep Hundreds of their own, are Exempted.

5. Sheriffs are not capable to Act as Justices of Peace (a). For the *custos Rotulorum* (b), or the eldest Justice of the *Quorum* in his Absence, at the General Sessions after *Michaelmas*, ought to appoint two Justices *quorum unus*, to have the oversight and controlment of the Sheriff, Under-Sheriff, their Officers and Deputs, and the inspection of their Books, Amerciaments and *Estreats* in their County-Courts: And to Administer an Oath to the Bailifs and Collectors of the Amerciaments, that they shall take no more Money than is contained in these *Estreats*. Nor shall the Sheriff, Under-Sheriff, Sheriff-clerk or their Deputs, make any *Estreats*, to Levy their Shire-Amerciaments, until the said Justices have

(a) 1 *Mar. Seff.* 2. c. 8. (b) *Nota*, the new Commission of the Peace for the Shire of *Edinburgh*, varies from a Commission to a County in *England* in this, that the former Concludes with *mandamus etiam custodi rotulorum pacis nostre, quod ad dies & loca prædicta, brevia præcepta processus & Indictamenta coram vobis vestra faciat, ut ea inspiciantur & debito fine Terminentur.* Whereas the Latter appoints one of the Justices of the *Quorum*, to be *custos Rotulorum*, with an Injunction to cause bring before himself and his Fellows at Sessions, the Writs, Precepts, Proseses, and Indictments concerning the Peace, at the said Days and Places, and to the said end.

Viewed their Books. Which *Eſtreats* ſhall be by Indentures betwixt the ſaid Juſtices and Sheriffs (a). The Juſtices of Peace are alſo to ſee that no Sheriff, Coroner, &c. make undue Returns of Jurors (b). Sheriffs making Proceſs upon Inditeiments in their Leets and Turns, and not delivering theſe Inditeiments at the next Sessions, Forfeit 40 Pound: And the Juſtices may proceed thereupon, as if taken before themſelves. And the Sheriffs Levying any Amerciament, by reaſon of any ſuch Inditeiment, before they have Proceſs from the Juſtices of Peace, and *Eſtreats* preſented to them, Forfeit 100 Pound (c).

I I.

The Duty and Powers of Sheriffs, Stewarts and Bail-lies of Royalty in Scotland.

Moſt of the Shires in Scotland are Erected in Sheriffdoms, by particular Acts of Parliament: But yet the Sovereign may Erect, Unite or Divide Sheriffdoms, without conſent of Parliament (d).

2. The Office of Sheriff was never Annual in Scotland, but is conferred either during the Sovereigns Pleaſure, or the Sheriffs Lifetime, by a Commiſſion under the Great Seal: Or it is Heretably Diſponed, and then paſſeth to Heirs, and is Tranſmitted as other Heretable Rights; ſave that a Sheriff-ſhip being *merum jus incorporatum*,

[a] 11 H 7. c. 15. [b] 27 Eliz. c. 7. Vid. Sup. pag. 10. [c] 1 Ed. 4. c. 2.
[d] *Mackenzie Crim. part 2. Tit. 12. N. 1.*

requires

requires no Seasin to the conveyance of it. Heretable Offices were Discharged by the Parliament (a) 1455 : Because *industria persona respicitur in Judice*. And therefore King James 6. & K. Charles 1. Bought in several Hereditary Sheriff-ships, designing to Purchase all. But yet since that Prohibition, Sheriff-ships in Fee have been Granted, and many such are presently enjoyed by Noblemen and others. It was lately found by the Lords of Session (b), That an Heretable Officer, incapable to Exerce for not qualifying himself in the Terms of Law, could Dispone his Jurisdiction to a Person Qualified, to take Effect even during the Disponers Incapacity. But upon a Reclaiming Bill, The Point was allowed to be brought again under Debate, without coming as yet to a new Decision.

3. Some Burghs Royal are Sheriffs within themselves, by special Grants from the Sovereign. But such have only a Cumulative Power with the Sheriffs, whereby the first Attacher is preferred : unless their Charter carry an exclusive Privilege, or a Power of Repledging from the Sheriff.

4. Sheriffs should be Good, Sufficient and Qualified Men [c], knowing the Laws [d], and having a Competent Estate, as a Guarantee of their Justice and Honesty, wherein they may be Punished in case of Malversation [e]. They are bound to Answer for their Deputes [f].

(a) Act 44. Par. 11. J. 2. (b) 22 July 1707. Marquis of Annandale contra Duke of Queensberry. (c) Stat K. David 2. c. 30. (d) Act 124 Par. 12. J. 6. (e) Act 6. Par. 1. J. 1. For a Judge guilty of gross Injustice facit litrem suam. (f) Act 26. Par. 5. J. 3.

5. Sheriff-Clerks should be Honest, Famous men, always Residing by themselves or sufficient Deputes, within the Head-Burgh of the Shire (a). When Sheriffs had the Nomination of their Clerks, they were liable in 100 Pound to the Sovereign, for their Negligence or Malversation, besides the Parties Damage (b): And were obliged to give in yearly to the Lords of Session at their first Downsitting, the names of Deputs and Clerks, they intended to make use of for that Year; and to find Burgessees Residing in *Edinburgh* Caution (c), that they should Yearly make due Compt and Payment in Exchequer (d). And the *Act* 124 *Par.* 12. *f.* 6. Obliges Sheriffs to find good Suretie in Exchequer, for the dutiful Discharge of their Office, their orderly Compting and Sending their Deputs and Clerks, the first of *November* every Year, to be Examined and Admitted by the Lords of Session, under such Penalties as these Lords should Modifie: with Certification that in case of Failzie, they were to be Denounced Rebels, and all the Lieges Exeemed from their Jurisdiction. But now when the Clerks depend upon, and are put in by the Secretary, Sheriffs are not to account for what they do amiss; tho the Clerks Malversing Forfeit their Moveables to the Queen [e].

6. Sheriffs, Stewarts, and Baillies of Regality should hold three Head-courts in the Year, viz. upon the first *Tuesday* after the 14 *January*, the

(a) *AB* 75. *Par.* 6. *f.* 6. (b) *AB* 71. *par.* 11. *Idem.* (c) *Caution Bourgeoise*, is understood by the *French* to be the best Caution. (d) *AB* 80. *Ibid.* (e) *d.* *AB* 71.

first Tuesday after *Lawsunday*, and the first Tuesday after *Michaelmas*: Where such Barons and Freeholders as owe Suit and Prefence, must compare Personally or be unlauded, and such as owe Suit only, must send their Suitors [a]. A Sheriff may Fine in ten Pound for Contumacy [b]. And may Cite the Vassals of a Regality within the Shire: But the Lord of Regality cannot Cite any without his Jurisdiction, tho living in the Shire, except he Raise Letters of Supplement for that Effect [c].

7. An Heretable Sheriff found grossly negligent or faulty in his Office, loses the benefit thereof for a Year; a Temporary Sheriff, for all the time he has it: and both are farther Punishable at the Queens will (d). A Sheriff absolutely refusing to do Justice, is to be put from his Office for a time, and Punished at Her Majesties pleasure, and to pay the Damage of the Party injured. An Heretable Sheriff for doing injustice, Forfeits his Office during three years; and other Sheriffs are put from theirs for ever: And both are farther liable to an Arbitrary punishment, and to give Satisfaction to the Persons Lessed (e). If any Sheriff give partial Counsel or take Bribes himself, or by his Wife, and Servants, is punishable by Infamy, Deprivation, and Confiscation of Movables (f).

(a) Act 71. Par. 6. J. 5. (b) Feb. 7. 1624, *Sandlands contra Robertson*. December 1628, *Crichton contra Wilson*. (c) *McKenzie* Observ. on the Act 130. Par. 9. J. 1. (d) Act 76. Par. 14. J. 2. This Distinction betwixt Heritable and Temporary Offices, is ordinary among the Doctors, *Bald. ad l. 1. ff. de Serv. Fugitiv. Farinac. Q. 3. N. 423*. (e) Act 26. Par. 5. J. 3. (f) Act 104. Par. 7. J. 5. *janet*. Act 93. Par. 6. J. 6.

8. The Sheriffs Office is of a complex Nature, being in some cases Ministerial, and in some Judicial: As has been observed concerning Sheriffs in England.

The Ministerial Part of a Sheriffs Function.

9. They compear Yearly in the Month of July in Exchequer to make their Accompts and full Payment *aque* with the Rolls; so far as they Intrometted, or might have Intrometted by virtue of their Office (a). And the Sheriff and his Deputs may be Charged or Poinded conform to the *Responde-Book** for what they are found in Arrear to Her Majesty; Or the Parties to whom Precepts were given, not having the Sheriffs Discharge to produce, may be Distressed in like manner: Or both they and the Sheriff may be justly put to it for Payment (b).

10. All Summons's and Diligences of old (when Process proceeded upon Brieves out of the Chancellary) were Executed by Sheriffs. And even now since the Institution of the Colledge of Justice, (when such Executions may be Expede by others) the old Stile is so far Retained, as that the Queens Letters are Directed to Sheriffs in that Part Specially Constitute by the Lords. Breives out of the Chancellary for Serving Heirs, or for Serving Tutors of Law to Pupils, and Idiots, or for Serving a Relict to a Terce of her Husbands Heritage, or for dividing Lands, or for

(a) A^ct 96. Par. 7. J. 5. A^ct 124. Par. 12. J. 6. (b) A^ct 73. Par. 11. J. 6.

Perambulating Marches, are directed to Sheriffs, Baillies of Royalty or Regality, &c. And once no Commission could be granted to Apprise Lands, or Serve Brieves but to the Sheriff, Stewart, or Baillie if Heretable (a). But now it is ordinary for the Lords of Session, in both these cases to Authorize their Macers as Sheriffs in that Part. An Heir being specially Served and Retoured in a Fee holden immediately of the King, doth of course get Precepts out of the Chancery to the Sheriff, or other Judge Ordinary in the place, to Infeft him, *Capiendo Securitatem*, for the Nonentry and Relief due to the Queen. For which the Judge must hold Compt in Exchequer, unless these Profits belong to himself, as a Baillie of Regality. And the Judge Ordinary Refusing to grant Infeftment, the Lords of Session will, upon a Supplication, give Warrant to the Director of the Chancery to Issue out Precepts for that effect to any other Person as Sheriff in that part. All Seaisins upon Precepts out of the Chancery Expede upon Retours, must be given by the Sheriffs as Bailiffs, and the Sheriff-Clerks as Notaries (b). Because the Sheriff answers for the Retour Duty, and takes Surety for the same at the giving of Seaising: And the Director of the Chancery, when he delivers the Precepts, inserts in the *Responde-Book* the Sum for which the Sheriff should take Surety, and hold Compt in Exchequer.

11. The Sheriff being Informed of Slaughter committed, he should follow the Slayer with

(a) Act 82. Par. 6. 7. 5. (b) Act 77. Par. 6. 7. 5. *jointly*. Act 15. Par. 18. 7. 6.

sound of Horn and Convocation of the Lieges; And if he escape into another Shire, the Sheriff should acquaint the next Sheriff, or Lord of Regality, and so from one Judge to another till the Criminal be apprehended (a). A Sheriff is also obliged to raise the *Hue and Cry* after all Rebels, and to search for, apprehend and commit them when Required (b). And where the Traitors he is in quest of, escape out of his Jurisdiction, he ought to Advertise the Sheriffs and Judges Ordinary of the four halves about, and require them to use the like Diligence as they will answer on their Peril, under the same pains incurred by the Traitors (c). Yea Sheriffs as the Queens proper Officers, are not only by Law, but by the Nature and Duty of their Office, obliged to Execute the Laws against Contemners of Her Majesties Authority; And for failing in Diligence themselves are liable to underly the Law as such (d). They are to assist such as are violently Dispossessed; and to apprehend the Hearers and Sayers of Mass (e), Strickers of false Coin (f), or Disturbers of the Peace, and exact Caution for their appearance.

12. Sheriffs are bound to Meet and Receive the Circuit Judges, at their Entry into their respective Shires; to convey and accompany them during their Stay there; to cause sufficient and legal Men compear before them, to be Assizers and Witneses; and to give all due Respect to them, and such special Assistance as their Office

(a) Act 8. Tit 3. §. 4. (b) Act 5. Par. 1. §. 6. (c) Act 124. Par. 12. §. 6. (d) Act 15. Scil. 2. Par. 1. Ch. 2. (e) Act 5. (f) Act 18. Par. 3. §. 3.

obliges them to when Required by the said Judges.

The Judicial Capacity of Sheriffs.

13. The Judicial Function of Sheriffs comprehends a Civil and Criminal Jurisdiction.

14. Sheriffs in their Civil Capacity, are competent to Judge Ejections (a), Recent Spulzies (b), and Removings, for Discussing whereof they and all Judges having Jurisdiction, were ordained to keep Courts whole 15 Lawfull Days after Trinity Sunday; and are liable to pay the Parties Damages if they grant not Precepts and do Justice (c). Questions and Pleas concerning Marches, such as Perambulations (d) and Actions of Molestation (e) are properly Cognoscible by an Assize before the Sheriff, Baillie, or other Judge Ordinary where the Lands ly. The Lords of Session Advocat to themselves dubious Cases, or where the Judge is suspected of Partiality.

unlawfull taking of others Goods.

15. Sheriffs and all Judges Ordinary within Regality and Royalty, are to Distribute speedy and impartial Justice in Civil Causes falling under their Cognizance (f): And get 12 d. of the Pound as Sentence-Money (g), called *Sportula* in the Civil Law.

(a) Act 78. par. 14. f. 2. (b) Act 65. par. 6. f. 4. (c) Act 39. par. 6. Q. M. (d) Act 79. par. 6. f. 6. (e) Act 42. par. 11. f. 6. Action of Molestation is the same with *Finium Regundorum* in the Civil Law, and tho both Molestation and perambulation concern the Trial of Marches, they differ in that, the one is properly a Peticory, and the other a Possessory Judgment. (f) Act 124. par. 12. f. 6. (g) Act 66. par. 6. f. 4.

16. A Sheriff ought to be no less diligent and impartial in Judging Criminals. When he hears of any unlawful Convocations coming to the Court, he should Charge them to come in sober manner; and if they refuse to dissipate at his desire, he is to continue the Court, and pursue them: For which they are liable to a Years Imprisonment (a). It being dangerous to allow any Sheriff to fall on summarily and kill such as disobey his Orders. But tho private Persons are not allowed to Travel with a gathering of People, Sheriffs and the Queens other Officers may do it for the Execution of Justice and Vindicating Her Majesties Authority (b). Sheriffs should apprehend and punish Sorners (c), Egyptians, Vagabonds and Strong Beggars (d), Foretallers (e), and destroyers of Planting (f). They are also competent to Judge Witchcraft (g): Tho *de Praxi* this Crime hitherto hath been tried only before the Justiciary, or such as had Commissions from the Council for that effect. Sheriffs may Fine for Bloodwits in 50 Pound, but no higher. In a word, They may Cognosce any Crime except Treason, and the four Pleas of the Crown, And yet they may Judge within three Suns Murderers or Man-slayers taken Red-hand (h), or pursued *ex incontinenti* and taken (i). Who, if apprehended in *alieno Territorio*, must be sent back to be tried before the Sheriff where the Crime

(a) Act 104. Par. 14. §. 3. (b) Act 27. Par. 4. §. 5. (c) Act 21. Par. 6. §. 2. (d) Act 124. Par. 12. §. 6. (e) Act 21. Par. 4. §. 5. (f) Act 24. Par. 6. §. 6. (g) Act 73. Par. 9. Q. M. (h) I. E. immediately committing the Murder. (i) Mackenzie, Crim. part 2. Tit. 12. N. 3.

was committed (a); that Reparation may be made, where the Offence was given. Sheriffs use also to sustain themselves Judges of Theft even upon Citation, when the Thief is not taken with the Fang: Albeit S. George Mackenzie Observes (b), That the Lords of Justiciary only are competent to Judge a Thief upon Citation.

14. Crimes are ordinarily tried before the Sheriffs by an Assize, and the Procurator Fiscal is Pursuer. But sometimes the Sheriff Condemns upon the Pannels Confession without an Assize. He may Judge a Thief taken with the Fang, tho no private Party concur in the Pursuit; but cannot Judge Theft where no Fang is found, except a private Party pursue (c).

15. The Lords of Session sometimes Advocate difficult Criminal Causes from the Sheriffs, to the Justiciary. And tho a Sheriff cannot Judge Civil Causes in Vacation time without a Dispensation: He may Judge in *Criminalibus*; *quia periculum est in mora*.

16. The Queens Sheriff in some of Her proper Lands, is called a *Stewart*, Whose Power comes up to that of a Lord of Regality, and his Jurisdiction is called a *Stewartry*. Such are the *Stewartries* of *Kirkcudbright*, *Orkney* and *Zetland*, *Galloway*, *Monteith*, *Strathern*: The two first whereof send Members to Parliament. These *Stewartries* were Erected out of Lordships fallen in the Sovereigns Hands by Forfeiture, or otheways. In other Lands of the Queens Property, Her Majesties

(a) Act 2. Par. 3. 7. 4. (b) *Ibid.* Part. 1. Tit. 19. N. 7. (c) *Ibid.* Part 2. Tit. 12. N. 5.

Sheriff is called a *Baillie*, and his Jurisdiction a *Bailliarie*: Such as the *Bailliaries of Cuningham* and *Carriek*.

S E C T. II.

The Duty and Powers of Lords and Baillies of Regality.

THE Jurisdiction of Sheriffs was much incroached on and prejudged by the Erection of Regalities. For the Feudal Law having introduced an Heretable Jurisdiction in favours of Barons over their own Lands; This came to be divided into a *Barony* specially so called, and a *Barony* having greater Power and Privileges called a *Regality*, or *Feudum Regalem dignitatem habens*. Persons in whose favours such Regalities were Erected, carry with us the Titles of *Lords of Regality*. Who have Lands whereof they are Proprietars, or Superiors, with a Jurisdiction annex'd, equal to that of Sheriffs in *Civilibus*, and to the Authority of the Commissioners of Justiciary in Criminal Cases. And may Repledge [a] Malefactors from both in all cases except Treason, and the four Pleas of the Crown: Which are only competent to be tried before the Justice Court. *S.G. Mackenzie* [b] excepts also Actions of Deforcement from their Power of Repledging: Thinking it incongruous to oblige Her Majesty to seek Justice from Inferior Judges, where Her Officers of State cannot attend to Pursue.

(a) s. s. Crave that Criminals Dwelling within their Jurisdiction, may be Remitted to be Judged by them. (b) *Ibid.* Tit. 11.

2. A Party may be Repledged ; tho not Residing within the Regality at the time he is Accused ; if he dwelt there when the Crime was committed [a]. He who offers to Repledge, must find Caution called *Culreach* to do Justice upon the Person Repledged within Year and Day : And for not Performance, *Tines his Court*, (as we Phrase it) for Year and Day ; and the Cautioner who Borrowed the Offender, is liable to an Unlaw or Amerciament ; and the Judge from whom he was Borrowed, may proceed to do Justice [b]. No Person absent can be Repledged : Because a Pannel Repledged, must find Caution for his Appearance before the Judge of Regality, to underly the Law for the Crimes laid to his Charge. Nor can any be Repledged after proponing Defences, for thereby the Jurisdiction is Prorogated.

3. There is a distinction betwixt Laick, and Ecclesiastick Regalities which were Reserved to the Erection-Lords after suppression of those Religious Houses they formerly belonged to. In so far as, the Lords of Laick Regalities may always Repledge : But the Repledging Privilege is only competent to Ecclesiastick Regalities, when they prevent the Commissioners of Justiciary ; with whom otherwise they can only Sit. Albeit without preventing or concurring with these Justices they have Right to the Escheats and Fines of those Condemned [c]. Nor can any Baillie or Stewart of Regality Repledge from the

(a) *Ibid.* n. 8. (b) *Quoniam Attash. c. 3. Mod. sen. cur.*
25. (c) *Ibid.* n. 6.

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Justice Air, but only concur in Judging [a]: Without prejudice to their Share of the Penalties and Unlaws.

4. Lords of Regality are accounted Inferior Judges, when Compared with the Lords of Justiciary [b]: But are more Absolute in their Procedure, than other Inferior Judges. For they may Fine in 100 Pound, when Sheriffs and others cannot go so high.

5. Lords of Regality have Right to the single Escheat of Rebels [c], and Criminals within their Jurisdiction, albeit Condemned by the Justices, except for Treason and the Pleas of the Crown [d]. Nor doth it alter the case, whether the Delinquents Moveables be within or without the Regality. Sir George Mackenzie [e] Starts a Question, whether a Lord of Regality may place a Gallows upon any part of his Vassals Land? and Delivers his Opinion to this purpose. 1. A former place destin'd by Custom for such an end, cannot be altered. 2. Tho there were no such place fix'd by Custom, A Lord of Regality cannot use his Privilege, with a visible Design to affront his Vassal: As if he should offer to plant the Gibbet at his Vassals Gate, or Garden door. For *nemo potest uti jure suo principaliter in emulationem alterius*: And where in Servitudes we say, *unaquaque Gleba servit*: that is to be taken Civiliter, and not Judaice.

6, In Respect of the great Powers and Privileges competent to a Lord of Regality, the grant.

(a) Act 29. Par. 11. Ja. 6. (b) Act 173. Par. 13. J. 6. (c) i.e. Outlaws at the Horn for Civil Causes. (d) Mackenzie Ibid. N. 9. (e) Ibid.

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ing of Regalities without consent of Parliament, was Discharged (a): Tho a Confirmation in Parliament has been found to sustain a Charter of Regality Originally granted by the King. And our Sovereigns have conceived themselves so much Concerned and Prejudged by the Erection of Regalities, that these are Revoked in all their general Revocations. The Reason why Heretable Sheriff-ships were simply Discharged (b), And only Regalities Erected without delivrance of Parliament Discharged: is because the former fixes the constant Dependence of a whole Shire upon a Subject, whereas the latter subjects only a Mans own Lands and Vassals to him.

7. A Lord of Regality cannot sit Personally in his own Court, but must do Justice by a Baillie: who is sometimes admitted by a simple Commission for Life, and sometimes is made Heretable Baillie. Which Baillie in Lands there belonging to the Queen, is properly called *Stewart of the Regality*. And Regalities returning to the Queen by Sale or Forfeiture; The Inhabitants may be judged by the Sheriffs, and the ordinary Judges (c), till a Stewart or Baillie be appointed. For when Regalities fall to the Sovereign, they are ordinarily suppress'd, and Stewartries set up in their Room. The Baillie of Regality hath a Cumulative Jurisdiction, with the Bail-

(a) *Act* 43. *Par.* 11. *J.* 2. (b) *Act* 44. *Ibid.* (c) *Act* 25. *Par.* 6. *J.* 2.

lies of the Burgh of Regality (a). And being found negligent in Executing the Laws against Rebels for Capital Crimes, the Sheriff may do it for him within the Regality (b).

8. It hath always been much controverted; whither the Queen may Erect Regalities within the bounds of Heretable Sheriff-ships? Which important Contraverſie, I ſhall diſplay in the ſame method that a Learned Divine (c) has handled the Point concerning Predeſtination: By ſtating the Arguments of both ſides ſo fairly and fully, as not to diſcover my own opinion.

9. The Affirmative may be thus pleaded. Firſt, There would ſeem to be a difference betwixt the Grant of an Hereditary Sheriff-ſhip, and other Rights of Property. In that the former is but a naked Office for Executing the Law within the Shire, by the Sheriff who is the Queens Lieutenant there; implying a Reſerved Power to Her Majeſty, to Erect *jure Coronæ* other Excluſive and Derogatory Offices and Jurifdictions within the ſaid Bounds. Which has been Exerced by Erecting many Regalities within Heretable Sheriffdoms. Whereof never any was quarrelled by Reduction, till that a few Years ago, The Laird of *Grant* having upon a Signature from King *William*, got his Lands Erected in a Regality, whereof a part lay within the Shire of *Murray*: *Alexander Dumbar* of *Westfield* Heretable Sheriff

(a) In the Ereſtion-Charter of a Regality, there is a Burgh of Regality expreſſed: Where all Courts muſt be holden, unleſs the Parties be expreſſly Cited to Compare at ſome other Place; or that the Judge has been in uſe for a long time without Interruption, to ſit elſewhere. *Mackenzie Ibid n. 8.* Burghs of Regality having Provost, Baillies, and a Common-good, are obliged to have, and maintain ſufficient Priſons for Debtors and Criminals. *Alt 273. Par. 15. J. 6.* But theſe Magiſtrats can Arreſt none for Debt, except their own Burgeſſes. *Alt 8. Siſſ. 3. Par. 2. Ch. 2.* (b) *Alt 97. Par. 7. J. 5.* (c) The Biſhop of *ſarum* in his Expoſition of the 39 Articles of the Church of England. *Alexander*

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thereof, Raised before the Session a Reduction and Declarator, to have it found and declared, That the said Regality could not Extend to any Lands, within the bounds of his Sheriff-ship. Which Plea including a Mixture of Right and Government, The Lords thought fit to ease themselves of by a Remit to the Parliament, and was never yet Determined. There hath indeed been Protests taken against some Gifts of Regality, but not simply upon this Ground, That the Sovereign could not grant the same within Heretable Sheriffdoms : But also, because they included Lands lying in other Regalities, or Lands that held not of the Obtainer.

2. The Queen may Erect Royal Baronies within Heretable Sheriff-ships, whereby the Barons have a Cumulative Jurisdiction with the Sheriff, and the Right of Prevention in several cases ; which lessens and derogats from his Jurisdiction : Now the giving a privative Power to a Lord of Regality, is but a farther step of In-croachment, and *majus & minus non variant speciem*. Again, the Act of Parliament 7.4. Declaring Baronies not Exempted from the Sheriffs Jurisdiction, argues both that another Jurisdiction may be Erected within an Heritable Sheriff-ship ; And that the said Jurisdiction would have been privative, had there not been a special Law for the contrary. Consequently, seeing there is no particular Law making a Regality Dependent upon the Sheriffdom ; It may be Erected within the Heretable Sheriffs Territory, with a privilege of Independency upon him. 3. 'Tis an inherent Right in the Sovereign to Erect Burghs Royal, and Stewart-ries, and to grant Commissions of Justiciary within Heretable Sheriff-ships ; Which may in
some

some measure argue a Power to set up Regalities.
 4 True, Regalities were once Discharged to be Erected, without an Order of Parliament, *Act 43 Par. 11. f. 2.* But that Statute seems to have gone in desuetude, by a long contrary practice. And if it should yet take effect, the subsequent *Act 44* in that same Parliament, Discharging and Annulling all Heretable Offices, must be as effectual. So that our old Law is no less unfavourable to Heretable Sheriff-ships, than it is to Regalities. Yea, it appears to Level more directly at the overthrow of the Former, than of the Latter, by Discharging Heretable Sheriff-ships simply, and Regalities only without consent of Parliament. 5. It may be Argued, that the Rescinding of the *Act 1681*, anent the Sovereigns Jurisdiction as a Grievance, doth not weaken or diminish the Jurisdiction of Regalities. Because, that statute was mainly Designed to have some Laws more sharply Executed, by extraordinary Commissions to Persons fit for the purpose; than was expected from the ordinary Judges Established by Law: And the Annulling the *Act 1681*, did but state things in the case they were before it; And so prejudged not the anterior practice of Erecting Regalities. 6. If Regalities fell under the Sovereigns Revocation, it were *jus tertii* to any other than the Sovereign to Quarrel the same *ex eo capite*. But then, there is a general quality in all the Royal Revocations, that they should only take effect, as to things our Law and Custom allows to be Revoked: under which we cannot comprehend Regalities, the granting whereof hath been Authorized by long Custom. Nor doth the Queen by Erecting Regalities, principally Dispose her own Casual-

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ties of Escheat and the like in gross: but these
only follow as a consequent of the Regality, which
may be Erected by Law.

10. The Erecting of Regalities within Heretable Sheriff-ships, may be quarrelled upon the Grounds following 1. *Quod meum est sine facto meo auferri non potest*, no Mans property can be taken from him, or Diminished without his own consent, or by Authority of Law, which is Equivalent. And so it is, that an Heretable Sheriff-ship within the whole Bounds thereof, is the Sheriffs undoubted Right and Property. In so far as, he pays a distinct *Reddendo* for it, it hath Emoluments and Perquisites, it passeth to Heirs and Singular Successors, and may be affected by the Diligence of Creditors: And our Kings have considered Heretable Sheriff-ships as Rights of Property *in patrimonio*, & *in Commercio*, by Purchasing severalls of them for considerable Prices. 2. The granting of a Cumulative Jurisdiction to the King, in the year 1681, in prejudice of Heretable Rights, was judged a Grievance, and Abrogated in the year 1690: Consequently, the setting up a Privative Jurisdiction, is yet more grievous. And when the Parliament 1693, Established a Commission of Justiciary in the Highlands, They would not inroach upon the Heretable Justiciaries of the Earl of *Argyle* and others, without their consent. 3. As the Queen cannot Erect a Sheriff-ship within an Heretable Sheriff-ship, or make two Sheriff-ships of one: No more can She Erect a Regality, which, being *alterum Territorium*, is as Privative of the Sheriff-ship, as if it were another Shire. And 4. Tho several Regalities within the Bounds of Heretable Sheriff-ships have been granted; the Granting thereof

thereof was contrary to Law, and still Reclaimed against by Protests taken in Exchequer; and a *facto ad jus non valet consequentia*. And our Princes do therefore in their general Revocations expressly revoke Regalities. Nor can any Decision be Condescended on, where ever a Regality was Established by way of Declarator against anothers private Right. Baronies indeed are ordinarily Erected within Heretable Sheriff-ships: but these do not, as Regalities incroach upon or prejudice the Sheriffs Jurisdiction *Privative*, but are consistent with, and Subordinate to the same. And for the like Reason, an ordinary Burgh Royal might be Erected within an Hereditary Sheriffdom; the distinguishing Privileges thereof being Immunities of Trade, that do nothing prejudice the Sheriff. I said an Ordinary Burgh-Royal, because an Hereditary Sheriff would have some Reason to oppose the Erection of such a Burgh, with the included Power of Sheriff-ship: Tho at the same time, it must be own'd, that the Sovereigns Prorogative of Erecting Burghs Royal, cannot be considered as impaired by the previous grant of an Hereditary Sheriff-ship. Stewartries may also be Erected within Heretable Sheriffdoms: Because, these Jurisdictions Exceed not the Sovereigns Property. And it cannot be doubted, but Her Majesty may exempt Her own Property from the Heretable Sheriffs Power, to which she and her Court Residing there, would not be liable. But there is no such Reason for setting up a Regality within anothers Territory. 5. The Erecting of Regalities with such a Privative Jurisdiction, is in effect a Disposing the Queens Casualties in gross, contrary to Law.

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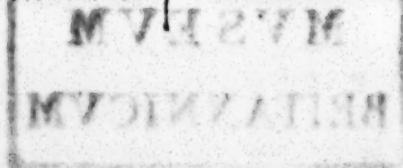
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